

**Ochoa, Christiana**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: ADAMS GOLF, INC. :

SECURITIES LITIGATION :

X

The Expert Discovery Deposition of  
CHRISTIANA OCHOA, taken in the above-entitled case  
before KATHLEEN J. PACULT, a Certified Shorthand  
Reporter within and for the County of Cook, State of  
Illinois, taken pursuant to the provisions of the  
Federal Rules of Civil Procedure and the Rules of  
the Supreme Court thereof pertaining to the taking  
of depositions for the purpose of discovery, taken  
on the 4th day of August 2006, at the hour of  
9:30 a.m., at 6100 North River Road, Rosemont,  
Illinois.

Page 18

1 typically goes through in selecting a course book 09:50:20  
 2 and choosing that one. 09:50:23  
 3 Q. Okay. And would you just explain for 09:50:25  
 4 the jury what that process is? 09:50:26  
 5 A. Sure. That process includes reviewing 09:50:27  
 6 the world of possible international business 09:50:30  
 7 transactions textbooks, looking at them seeing which 09:50:34  
 8 ones has materials that you think are presented 09:50:39  
 9 clearly, neatly, in a way that is well organized, 09:50:41  
 10 easy to understand and will capture the students' 09:50:44  
 11 attention. 09:50:44  
 12 In addition, I spoke with other 09:50:51  
 13 professors who I knew had taught in the area before 09:50:53  
 14 and asked them about their experiences in teaching 09:50:55  
 15 international business transactions and the 09:50:59  
 16 textbooks that they had used and the problems and 09:51:01  
 17 the benefits that they had encountered with each of 09:51:02  
 18 them. 09:51:07  
 19 Q. Now, only one section in that course 09:51:08  
 20 book is devoted to gray marketing. Do I have that 09:51:10  
 21 right? 09:51:15  
 22 A. Yes. 09:51:15  
 23 Q. And do the materials in that section 09:51:15  
 24 deal with the golf industry exclusively or just sort 09:51:18

Page 19

1 of mention it? 09:51:24  
 2 MR. COLLINS: I am sorry. I think you 09:51:25  
 3 are misunderstanding some of the thrust of the 09:51:27  
 4 testimony here, but -- so therefore, I object on 09:51:30  
 5 grounds that you mangled the testimony. 09:51:35  
 6 Go ahead and answer. 09:51:37  
 7 BY THE WITNESS: 09:51:39  
 8 A. There are, in the textbook itself, 09:51:40  
 9 there is no -- I believe no mention of the golf 09:51:43  
 10 industry at all. It is my supplemental materials 09:51:47  
 11 that include that. 09:51:49  
 12 BY MR. BESSETTE: 09:51:50  
 13 Q. Okay. What supplementary materials 09:51:50  
 14 are those? 09:51:51  
 15 A. Every year in addition to the textbook 09:51:52  
 16 I assign a course packet of supplemental materials 09:51:55  
 17 that I believe are particularly useful in 09:51:59  
 18 elucidating particular topics, and I chose some 09:52:07  
 19 materials on the gold industry and the golf 09:52:08  
 20 equipment industry in particular in the presentation 09:52:08  
 21 of counterfeiting and gray marketing material. 09:52:11  
 22 Q. And when did you add those 09:52:12  
 23 supplementary materials, the particular ones on the 09:52:16  
 24 golf industry? 09:52:19

Page 20

1 A. They have been changed over the course 09:52:19  
 2 of the time that I have taught the class. I have 09:52:21  
 3 now taught the class three times. Each year I 09:52:24  
 4 believe they have been slightly different, those 09:52:26  
 5 materials have been slightly different. So in 09:52:29  
 6 preparation for teaching each year, I reevaluate 09:52:32  
 7 and -- I reevaluate the materials I have used before 09:52:35  
 8 and add or subtract materials that were included. 09:52:39  
 9 Q. So the course book itself doesn't have 09:52:42  
 10 a section on gray materials as it deals with the 09:52:44  
 11 golf industry, it is the supplemental materials. Do 09:52:47  
 12 I understand that right? 09:52:50  
 13 A. It is has a section on the gray 09:52:50  
 14 market. It does not have a section on the gray 09:52:53  
 15 market in relation to the golf industry. 09:52:56  
 16 Q. Okay. And when you first started 09:52:58  
 17 teaching, is it your understanding that in the first 09:53:00  
 18 year, which I guess we'll get to here, '03 maybe, 09:53:03  
 19 you provided supplemental materials that focused on 09:53:05  
 20 gray marketing in the golf industry? 09:53:08  
 21 MR. COLLINS: Asked and answered. 09:53:10  
 22 Go ahead. 09:53:12  
 23 BY THE WITNESS: 09:53:13  
 24 A. In the first year that I taught the 09:53:13

Page 21

1 course, I did include those materials, yes. 09:53:16  
 2 BY MR. BESSETTE: 09:53:18  
 3 Q. I'm sorry, you did? 09:53:18  
 4 A. I did include those materials, yes. 09:53:18  
 5 Q. Okay. Now, where did you find those 09:53:19  
 6 materials? 09:53:20  
 7 MR. COLLINS: And we're asking 09:53:23  
 8 specifically with regard to the first year? 09:53:24  
 9 MR. BESSETTE: Right. 09:53:26  
 10 BY THE WITNESS: 09:53:26  
 11 A. The first year that I taught the 09:53:27  
 12 class, again, I followed pretty standard practice 09:53:29  
 13 for new professors. I used materials that a person 09:53:32  
 14 who had taught international business transactions 09:53:39  
 15 introduced me to. 09:53:42  
 16 BY MR. BESSETTE: 09:53:43  
 17 Q. And the supplemental materials that 09:53:43  
 18 you used starting in '03 and continuing to the 09:53:45  
 19 present have been produced? 09:53:48  
 20 A. Yes. I believe. And materials that I 09:53:49  
 21 taught the last time that I taught have been 09:53:52  
 22 produced. 09:53:55  
 23 Q. Do you have in your possession the 09:53:56  
 24 materials starting from the first time you taught to 09:53:59

Page 26	Page 28
<p>1 this case? 09:57:18</p> <p>2 A. Yes. 09:57:18</p> <p>3 Q. Did you review any other academic 09:57:19</p> <p>4 articles on gray marketing in your work in this case 09:57:23</p> <p>5 that you have not listed here? 09:57:27</p> <p>6 A. No, I don't think so. Let me actually 09:57:28</p> <p>7 rephrase. After receiving Mr. Frazier's report, I 09:57:32</p> <p>8 also reviewed the articles that he submitted that 09:57:38</p> <p>9 were not on this list. 09:57:42</p> <p>10 Q. Okay. So prior to receiving his 09:57:43</p> <p>11 report, you didn't review anything more than the 09:57:45</p> <p>12 eight articles in your report? 09:57:48</p> <p>13 MR. COLLINS: In connection with this 09:57:49</p> <p>14 case? 09:57:51</p> <p>15 MR. BESSETTE: Yes. 09:57:51</p> <p>16 BY THE WITNESS: 09:57:52</p> <p>17 A. Correct. 09:57:53</p> <p>18 BY MR. BESSETTE: 09:57:53</p> <p>19 Q. Okay. How did you -- what search did 09:57:53</p> <p>20 you undertake to decide on these eight articles to 09:57:54</p> <p>21 review? 09:57:58</p> <p>22 A. I did -- I went through the process 09:57:58</p> <p>23 that I often go through in performing my research. 09:58:01</p> <p>24 I got online, I looked at our library's holdings, I 09:58:05</p>	<p>1 A. That's correct. 09:59:13</p> <p>2 Q. Do you teach courses in marketing? 09:59:14</p> <p>3 A. No. 09:59:16</p> <p>4 Q. Have you ever taught a course in 09:59:16</p> <p>5 marketing? 09:59:18</p> <p>6 A. No. 09:59:19</p> <p>7 Q. Have you ever taken a course in 09:59:19</p> <p>8 marketing? 09:59:21</p> <p>9 A. That's thinking back a long ways. I 09:59:22</p> <p>10 don't think so. 09:59:27</p> <p>11 Q. Have you ever published a paper on 09:59:27</p> <p>12 gray marketing? 09:59:30</p> <p>13 A. No. 09:59:31</p> <p>14 Q. Have you ever published an article or 09:59:31</p> <p>15 book on gray marketing? 09:59:33</p> <p>16 A. No. 09:59:35</p> <p>17 Q. Have you ever given a presentation on 09:59:35</p> <p>18 gray marketing? 09:59:37</p> <p>19 MR. COLLINS: Outside the class work 09:59:38</p> <p>20 that she has described? 09:59:41</p> <p>21 MR. BESSETTE: Yeah. 09:59:43</p> <p>22 By MR. BESSETTE: 09:59:43</p> <p>23 Q. I am not viewing teaching law students 09:59:45</p> <p>24 as a presentation. That's your profession. 09:59:48</p>
Page 27	Page 29
<p>1 used databases that are available to me as a 09:58:11</p> <p>2 professor, and looked for articles that I thought 09:58:16</p> <p>3 were useful and pertinent. 09:58:20</p> <p>4 Q. Why did you exclude some and include 09:58:23</p> <p>5 these eight? 09:58:27</p> <p>6 MR. COLLINS: Foundation. 09:58:27</p> <p>7 Go ahead. 09:58:28</p> <p>8 BY THE WITNESS: 09:58:28</p> <p>9 A. I tried to find articles that I 09:58:30</p> <p>10 thought specifically dealt with the questions that I 09:58:32</p> <p>11 was asked to address, the types of profiles that 09:58:34</p> <p>12 make a business particularly susceptible to gray 09:58:39</p> <p>13 marketing, and also the kinds of impacts that gray 09:58:43</p> <p>14 marketing can have on a business. 09:58:46</p> <p>15 BY MR. BESSETTE: 09:58:48</p> <p>16 Q. In your review that produced the eight 09:58:48</p> <p>17 articles that are listed in your report, do you 09:58:51</p> <p>18 recall whether you reviewed any of the articles that 09:58:53</p> <p>19 you saw listed in Mr. Frazier's report, Exhibit 305? 09:58:55</p> <p>20 A. No, I don't think I did. 09:59:01</p> <p>21 Q. To the best of your knowledge, in your 09:59:03</p> <p>22 search for articles related to gray marketing, you 09:59:07</p> <p>23 didn't come across any of the ones Mr. Frazier 09:59:10</p> <p>24 listed? 09:59:13</p>	<p>1 Have you ever given a presentation 09:59:50</p> <p>2 outside the law school on gray marketing? 09:59:52</p> <p>3 A. No. 09:59:54</p> <p>4 Q. How about on marketing generally. 09:59:56</p> <p>5 Have you ever give a presentation on marketing 09:59:59</p> <p>6 generally? 10:00:02</p> <p>7 A. No. 10:00:02</p> <p>8 Q. Prior to your employment as an 10:00:02</p> <p>9 assistant -- I am sorry -- as an assistant 10:00:09</p> <p>10 professor -- 10:00:16</p> <p>11 A. Associate professor. 10:00:18</p> <p>12 Q. Oh, is it associate? I am sorry. 10:00:21</p> <p>13 Okay. 10:00:23</p> <p>14 So prior to your employment as an 10:00:24</p> <p>15 associate professor, had you ever -- Strike that. 10:00:26</p> <p>16 Prior to your employment as an 10:00:32</p> <p>17 associate professor, did you have any involvement 10:00:34</p> <p>18 with gray marketing? 10:00:39</p> <p>19 MR. COLLINS: Vague and ambiguous. 10:00:41</p> <p>20 BY THE WITNESS: 10:00:45</p> <p>21 A. I would agree. I'm not sure what you 10:00:45</p> <p>22 mean. 10:00:47</p> <p>23 BY MR. BESSETTE: 10:00:47</p> <p>24 Q. Well, did you ever get involved with 10:00:48</p>

Page 34

1 A. No. 10:04:46  
 2 Q. And then what did you do? 10:04:46  
 3 A. I was planning to go to Columbia 10:04:47  
 4 already. I went to Columbia. I worked there at a 10:04:51  
 5 law school and also in a human rights organization 10:04:55  
 6 in Bogota, Columbia. While I was there, I also came 10:04:59  
 7 back to take the bar again, passed it and then was 10:05:01  
 8 admitted. 10:05:04  
 9 Q. Okay. And the second time you took 10:05:05  
 10 the bar was in 2000? 10:05:06  
 11 A. No, it was in 1999 February. 10:05:08  
 12 Q. The next year, 1999, okay. 10:05:12  
 13 A. Correct. The next available time. 10:05:13  
 14 Q. Again, the New York Bar? 10:05:15  
 15 A. Yes. 10:05:17  
 16 Q. And passed it that time? 10:05:18  
 17 A. Yes. 10:05:19  
 18 Q. And then what did you do after passing 10:05:20  
 19 the bar in terms of working? 10:05:26  
 20 A. I was already in Columbia, committed 10:05:28  
 21 to working there for a year. And I fulfilled that 10:05:30  
 22 obligation, and then came back to the offer that I 10:05:34  
 23 had open for my law firm, Clifford Chance, and began 10:05:37  
 24 working as I had agreed with them before I went to 10:05:41

Page 35

1 Columbia. 10:05:44  
 2 Q. Okay. So through July 1999 at 10:05:46  
 3 Columbia, and then started back at Clifford Chance 10:05:49  
 4 in September '99 then, is that right? 10:05:53  
 5 A. That's correct. 10:05:54  
 6 Q. When did you decide you wanted to, you 10:05:55  
 7 know, go into teaching, being a law professor? 10:06:01  
 8 A. It is hard to remember when I didn't 10:06:03  
 9 think I might be a teacher. I think I finally 10:06:06  
 10 ultimately decided that I wanted to go into 10:06:10  
 11 academia -- well, no. Let me rephrase. That I 10:06:15  
 12 wanted to be a law professor during the trip that my 10:06:17  
 13 husband and I took in 2001 and 2002. 10:06:21  
 14 Q. Okay. When -- Professor, when do you 10:06:33  
 15 believe you became knowledgeable about the gray 10:06:44  
 16 market, gray marketing, I should say? 10:06:47  
 17 A. What do you mean by knowledgeable? 10:06:50  
 18 Q. Beyond a consumer, beyond somebody 10:06:52  
 19 just being a consumer, but having specialized 10:06:56  
 20 knowledge about gray marketing. When do you think 10:07:01  
 21 you attained that specialized knowledge? 10:07:03  
 22 A. My knowledge in the area has been 10:07:03  
 23 evolving, has been developing over the course of the 10:07:06  
 24 last three years as I have been teaching at Indiana 10:07:09

Page 36

1 University. 10:07:13  
 2 Q. Can you explain for me marketing as a 10:07:13  
 3 discipline in academia and business? 10:07:16  
 4 MR. COLLINS: Outside the scope of the 10:07:20  
 5 opinion. 10:07:22  
 6 BY THE WITNESS: 10:07:22  
 7 A. It's not my area of expertise. 10:07:23  
 8 BY MR. BESSETTE: 10:07:23  
 9 Q. What is not? 10:07:25  
 10 A. Marketing. 10:07:26  
 11 Q. Okay. So do you acknowledge you are 10:07:27  
 12 not an expert in marketing? 10:07:32  
 13 A. In marketing generally? 10:07:33  
 14 Q. Yes. 10:07:35  
 15 A. Yes. 10:07:35  
 16 Q. So you view gray marketing as 10:07:36  
 17 something different than marketing generally? 10:07:40  
 18 A. Yes. 10:07:42  
 19 Q. Can you explain that to me? 10:07:42  
 20 A. Sure. The reason I teach gray 10:07:44  
 21 marketing in my class, the reason I believe that the 10:07:47  
 22 authors of my book have included it in a book on 10:07:50  
 23 international business transactions is because the 10:07:52  
 24 gray market can have significant impact on a 10:07:56

Page 37

1 business. And as a result, both I and the authors 10:07:59  
 2 of the book I would expect, though I don't know 10:08:02  
 3 their exact reasoning, believe that students who are 10:08:05  
 4 holding themselves out as particularly knowledgeable 10:08:09  
 5 about international business transactions ought to 10:08:12  
 6 have some background in gray marketing. 10:08:16  
 7 (Off the record 10:08:16  
 8 discussion.) 10:08:16  
 9 BY MR. BESSETTE: 10:08:28  
 10 Q. So I take it if I asked you what is 10:08:28  
 11 commonly known as the four Ps of marketing, you 10:08:43  
 12 wouldn't know what they were? 10:08:47  
 13 A. No. 10:08:48  
 14 Q. Okay. Let me ask you, do you think 10:08:48  
 15 holding yourself out as an expert in gray marketing 10:08:51  
 16 without having any background knowledge or 10:08:55  
 17 specialized experience in marketing generally, you 10:08:59  
 18 can feel comfortable that you are an expert in gray 10:09:03  
 19 marketing without having that marketing generally 10:09:06  
 20 background? 10:09:10  
 21 MR. COLLINS: I think you are calling 10:09:11  
 22 for a legal opinion. 10:09:12  
 23 MR. BESSETTE: No, I am not. 10:09:14  
 24 MR. COLLINS: What do you mean by 10:09:15



Page 38	Page 40
<p>1 expert then? 10:09:16</p> <p>2 MR. BESSETTE: All right. Let me 10:09:17</p> <p>3 withdraw the question. 10:09:17</p> <p>4 BY MR. BESSETTE: 10:09:17</p> <p>5 Q. Let me ask you this: You are here 10:09:38</p> <p>6 today as an expert in gray marketing. Do I 10:09:41</p> <p>7 understand that right? 10:09:50</p> <p>8 A. Yes. 10:09:52</p> <p>9 Q. And that expertise has been developed 10:09:52</p> <p>10 over the last three years in connection with your 10:09:55</p> <p>11 teaching duties at the Indiana University School of 10:09:58</p> <p>12 Law? 10:10:03</p> <p>13 A. Correct. 10:10:03</p> <p>14 Q. All right. You have no background, 10:10:04</p> <p>15 expertise or knowledge in marketing generally? 10:10:05</p> <p>16 A. Correct. 10:10:07</p> <p>17 Q. To what extent in your view, 10:10:08</p> <p>18 Professor, is gray marketing related to marketing 10:10:11</p> <p>19 generally? 10:10:18</p> <p>20 A. Again, I am not an expert in marketing 10:10:20</p> <p>21 generally. So how much it relates and in what 10:10:23</p> <p>22 manners it relates to marketing generally, I 10:10:29</p> <p>23 wouldn't be qualified to answer. 10:10:32</p> <p>24 Q. Okay. And when do you believe you 10:10:35</p>	<p>1 BY MR. BESSETTE: 10:11:28</p> <p>2 Q. To do that, you are sitting here today 10:11:30</p> <p>3 as an expert in gray marketing in connection with 10:11:32</p> <p>4 this case. When do you believe you first acquired 10:11:37</p> <p>5 the requisite knowledge and expertise to sit in this 10:11:39</p> <p>6 chair today and offer testimony as an expert in gray 10:11:42</p> <p>7 marketing? 10:11:49</p> <p>8 MR. COLLINS: You may answer.</p> <p>9 BY THE WITNESS:</p> <p>10 A. To offer testimony in this case as an</p> <p>11 expert in gray marketing?</p> <p>12 BY MR. BESSETTE:</p> <p>13 Q. No. Do you understand the question</p> <p>14 is, when do you believe you acquired the requisite 10:11:50</p> <p>15 knowledge and expertise to hold yourself out as an 10:11:53</p> <p>16 expert in gray marketing, such as you are doing 10:11:55</p> <p>17 today in this case? 10:11:59</p> <p>18 A. Okay. Again, I think I answered this 10:11:59</p> <p>19 question already. Over the course of the last 10:12:02</p> <p>20 three years, I have been evolving and developing as 10:12:04</p> <p>21 an expert in a variety of fields, including the gray 10:12:08</p> <p>22 market. 10:12:11</p> <p>23 Q. I understand the evolution part. Can 10:12:11</p> <p>24 you tell me when you believe you acquired a certain 10:12:16</p>
Page 39	Page 41
<p>1 became an expert in gray marketing? 10:10:47</p> <p>2 A. I'm not sure exactly what you mean by 10:10:49</p> <p>3 the question. 10:10:54</p> <p>4 Q. Let me ask you this -- let me 10:10:55</p> <p>5 withdraw. 10:10:58</p> <p>6 MR. COLLINS: I should have objected. 10:10:59</p> <p>7 Go ahead. 10:11:00</p> <p>8 BY MR. BESSETTE: 10:11:01</p> <p>9 Q. Would you consider yourself an expert 10:11:02</p> <p>10 in gray marketing the first year you taught a class 10:11:04</p> <p>11 that had one component of it gray marketing? 10:11:09</p> <p>12 A. I think my students -- 10:11:12</p> <p>13 MR. COLLINS: I'm sorry. Objection, 10:11:12</p> <p>14 vague and ambiguous when you use the word "expert," 10:11:13</p> <p>15 because one doesn't know the context you are using 10:11:17</p> <p>16 it. 10:11:17</p> <p>17 In any event, go ahead and answer. 10:11:20</p> <p>18 MR. BESSETTE: Well, let me clarify. 10:11:20</p> <p>19 She has testified that she is holding herself out as 10:11:20</p> <p>20 an expert in gray marketing. 10:11:24</p> <p>21 MR. COLLINS: In connection with this 10:11:25</p> <p>22 litigation, yes. 10:11:26</p> <p>23 MR. BESSETTE: Correct. And that's 10:11:26</p> <p>24 the definition I am using, so... 10:11:27</p>	<p>1 knowledge of level and expertise that you deemed 10:12:19</p> <p>2 yourself qualified to be an expert such as you are 10:12:22</p> <p>3 holding yourself out today? 10:12:25</p> <p>4 A. It is a hard answer to give you, since 10:12:27</p> <p>5 I didn't assess myself in that way until after I was 10:12:29</p> <p>6 asked to serve in this case. However, the first 10:12:32</p> <p>7 time I walked into a classroom to reach gray market 10:12:35</p> <p>8 issues, I certainly had to have acquired the 10:12:41</p> <p>9 knowledge that I believed was necessary in order to 10:12:41</p> <p>10 educate -- I had to acquire the knowledge that was 10:12:41</p> <p>11 necessary in order to educate students about issues 10:12:50</p> <p>12 that they may not have known about, or may have had 10:12:53</p> <p>13 quite a lot of knowledge about before I walked in 10:12:56</p> <p>14 the room, and nonetheless, be able to teach them 10:12:59</p> <p>15 something. And as a result, I think, of the first 10:13:02</p> <p>16 time I walked into a classroom to teach gray market 10:13:04</p> <p>17 issues, I was certainly holding myself out as an 10:13:07</p> <p>18 expert to my students. 10:13:10</p> <p>19 Q. And to acquire the knowledge to hold 10:13:11</p> <p>20 yourself out as an expert to your student was 10:13:13</p> <p>21 acquired by what, reading the course book or what 10:13:16</p> <p>22 did you do to acquire the knowledge that you think 10:13:19</p> <p>23 was sufficient to hold yourself out as an expert to 10:13:22</p> <p>24 your students? 10:13:25</p>

Page 42

1 A. What I typically do in preparing for 10:13:25  
 2 class. 10:13:28  
 3 Q. And tell me what that is, please. 10:13:28  
 4 MR. COLLINS: Asked and answered. 10:13:31  
 5 Go ahead. 10:13:31  
 6 BY THE WITNESS: 10:13:32  
 7 A. Again, I read the materials that are 10:13:33  
 8 necessary -- that I have assigned to my students. I 10:13:35  
 9 also read outside materials that are out there for 10:13:38  
 10 them to read, but I am fairly sure they don't read. 10:13:42  
 11 BY MR. BESSETTE: 10:13:46  
 12 Q. Fair enough. So outside of reading 10:13:46  
 13 materials that other people have published, anything 10:13:48  
 14 else to gain the knowledge that you think is 10:13:57  
 15 appropriate to hold yourself out as an expert as you 10:14:00  
 16 do to your students? 10:14:04  
 17 A. No. 10:14:05  
 18 Q. Okay. And how many articles would you 10:14:05  
 19 say you have read in total dealing with the gray 10:14:07  
 20 market or gray marketing activity? 10:14:09  
 21 A. Again, that's -- that would be hard to 10:14:12  
 22 say. I don't keep a tally. 10:14:14  
 23 Q. I mean, a dozen, two dozen, three 10:14:16  
 24 dozen? I mean, can you give me an estimate? 10:14:21

Page 43

1 A. Again, it is hard to say simply 10:14:23  
 2 because I don't keep a tally, I don't keep a log. 10:14:26  
 3 And for each section in each class that I teach, of 10:14:29  
 4 which now there have been many over the course of 10:14:32  
 5 the last three years, I do the same. I engage in 10:14:35  
 6 the same activities. 10:14:39  
 7 Q. Well, I mean, just give me a sense for 10:14:41  
 8 how many articles you review, published articles 10:14:44  
 9 that deal with gray marketing? 10:14:47  
 10 MR. COLLINS: May I? You mean ever? 10:14:52  
 11 MR. BESSETTE: In total. 10:14:52  
 12 MR. COLLINS: The total number of 10:14:52  
 13 articles ever reviewed to the extent that Professor 10:14:53  
 14 Ochoa can give you a number. 10:14:55  
 15 BY MR. BESSETTE: 10:14:55  
 16 Q. Well, if it is easier to do it by 10:14:55  
 17 year, maybe. If you can think of a particular class 10:14:58  
 18 year and you review materials, as you say, to get 10:15:00  
 19 ready. How many -- let's do it that way, if that's 10:15:03  
 20 easier. 10:15:03  
 21 How many articles or books or 10:15:03  
 22 publications would you review that deal with gray 10:15:04  
 23 marketing activity in any given year, say, in the 10:15:07  
 24 last three years? 10:15:10

Page 44

1 A. Again, the number is hard to estimate, 10:15:12  
 2 simply because the kinds of materials I review may 10:15:14  
 3 be very lengthy, they may be very short. So if I -- 10:15:18  
 4 I could easily tell you that I have reviewed 90 10:15:20  
 5 published pieces in the gray market, that may not be 10:15:24  
 6 accurate, depending on the length of the pieces that 10:15:28  
 7 I was reviewing. 10:15:31  
 8 Q. You've never served as an expert 10:15:32  
 9 witness before in litigation? 10:15:34  
 10 A. Correct. 10:15:35  
 11 Q. Never testified in court as an expert 10:15:36  
 12 witness either? 10:15:41  
 13 A. Correct. 10:15:41  
 14 Q. Somewhere in here, I think Paragraph 8 10:15:41  
 15 of your report, Exhibit 303, you say you are being 10:15:55  
 16 compensated for the time spent in this matter at 10:15:59  
 17 your current hourly rate of 425. How did you 10:16:04  
 18 determine what your current hourly rate is? 10:16:07  
 19 A. Again, as we just discussed, I had not 10:16:09  
 20 served as an expert before, had not given expert 10:16:11  
 21 testimony before. And as a result, sought advise of 10:16:14  
 22 colleagues, both in fields of securities litigation 10:16:17  
 23 and also colleagues who are professors. And I also 10:16:20  
 24 believe I spoke to the partners with whom I worked 10:16:28

Page 45

1 at Clifford Chance. 10:16:31  
 2 Q. And how did you settle on 425? 10:16:33  
 3 A. Given the information that I received 10:16:36  
 4 from all the people with whom I spoke, it seemed 10:16:38  
 5 like a reasonable rate. 10:16:41  
 6 Q. Did Mr. Collins or anyone on the 10:16:42  
 7 plaintiffs -- plaintiff's lawyers have input into 10:16:45  
 8 what your rate should be? 10:16:47  
 9 A. They agreed. 10:16:49  
 10 MR. COLLINS: I think what we did was 10:16:49  
 11 to pay it. 10:16:51  
 12 BY MR. BESSETTE: 10:16:52  
 13 Q. But before you settled on the rate, 10:16:52  
 14 did you inquire of the plaintiff's lawyers whether 10:16:54  
 15 that was appropriate? Were they part of the 10:16:57  
 16 information you took into account in deciding on 10:16:59  
 17 425? 10:17:08  
 18 A. No. I stated my rate, they agreed. 10:17:08  
 19 Q. Okay. On page 3, again of Paragraph 9 10:17:12  
 20 of your initial report, you say, "I am familiar with 10:18:12  
 21 the causes and effects of gray market activity." 10:18:19  
 22 That familiarity with the causes 10:18:23  
 23 and effects, again, does that come from what you 10:18:25  
 24 have told us here today, your reading of various 10:18:27

Page 46	Page 48
<p>1 articles and teaching at the law school? 10:18:30</p> <p>2 A. Yes. 10:18:32</p> <p>3 Q. Now, if you would turn to page 15 and 10:18:32</p> <p>4 16 of your initial report. It is actually the last 10:19:23</p> <p>5 sentence of Paragraph 24 on page 16, but if you want 10:19:30</p> <p>6 to see that paragraph in total, you say that, "A 10:19:33</p> <p>7 significant amount of the literature on gray 10:19:38</p> <p>8 marketing discusses it in an international context, 10:19:41</p> <p>9 given the increased opportunities for arbitrage once 10:19:46</p> <p>10 largely undifferentiated products are sold 10:19:50</p> <p>11 internationally." 10:19:54</p> <p>12 How do you define "significant" in 10:19:55</p> <p>13 that sentence, Professor? 10:19:57</p> <p>14 A. Again, I am not comfortable with 10:19:59</p> <p>15 giving a percentage. It is a feel more than a 10:20:09</p> <p>16 quantitative measure. 10:20:13</p> <p>17 Q. I mean, is it a super majority, a 10:20:15</p> <p>18 majority, some? 10:20:18</p> <p>19 A. A good body. 10:20:19</p> <p>20 Q. So that would be less than a majority? 10:20:20</p> <p>21 A. Again, I'm not sure about the 10:20:24</p> <p>22 percentages. I would say it is somewhere -- well, 10:20:28</p> <p>23 I'm just not sure about the percentages. It is a 10:20:31</p> <p>24 feel. It is a lot of material on gray marketing. 10:20:33</p>	<p>1 international context? 10:21:57</p> <p>2 A. In my experience of reading articles 10:21:58</p> <p>3 on gray marketing and in pulling up articles on gray 10:22:00</p> <p>4 marketing and seeing articles on gray marketing, 10:22:02</p> <p>5 those which I have read, those I have seen titled, 10:22:05</p> <p>6 those which I have scanned, a significant portion of 10:22:09</p> <p>7 those deal with gray marketing in the international 10:22:11</p> <p>8 context. 10:22:14</p> <p>9 Q. So what you are saying is Paragraph 10:22:14</p> <p>10 24, that last sentence should say a significant 10:22:18</p> <p>11 amount of the literature on gray marketing that you 10:22:19</p> <p>12 have reviewed discuss it in an international 10:22:22</p> <p>13 context? 10:22:26</p> <p>14 A. I don't think that would be accurate. 10:22:27</p> <p>15 Q. How can you say that a significant 10:22:28</p> <p>16 amount of the total body of literature, which you 10:22:30</p> <p>17 are implying to me here today when you don't know 10:22:34</p> <p>18 how many that is, how can you say a significant 10:22:36</p> <p>19 amount deals with international? I am just curious. 10:22:41</p> <p>20 MR. COLLINS: Misstates the testimony. 10:22:44</p> <p>21 Go ahead and answer. 10:22:45</p> <p>22 BY THE WITNESS: 10:22:46</p> <p>23 A. Again, I stated that I wouldn't be 10:22:47</p> <p>24 able to give you a percentage. And the reason I 10:22:48</p>
Page 47	Page 49
<p>1 Q. Going back I guess to pages 3 and 4, 10:20:42</p> <p>2 the eight articles, the eight academic articles that 10:20:52</p> <p>3 you reviewed in connection with your work in this 10:20:54</p> <p>4 case. I think I already have the answer to this, 10:20:58</p> <p>5 but that's not the universe of academic literature 10:20:59</p> <p>6 related to gray marketing, right? 10:21:05</p> <p>7 A. Correct. 10:21:06</p> <p>8 Q. Okay. How many academic articles are 10:21:07</p> <p>9 you aware of that deal with gray marketing? 10:21:10</p> <p>10 MR. COLLINS: In the universe? 10:21:13</p> <p>11 MR. BESSETTE: Yeah. 10:21:16</p> <p>12 BY MR. BESSETTE: 10:21:16</p> <p>13 Q. How many exist? 10:21:17</p> <p>14 A. I don't know. 10:21:18</p> <p>15 Q. No sense at all? 10:21:19</p> <p>16 A. It is like any area. If you ask me to 10:21:20</p> <p>17 give you a sense of how many academic articles exist 10:21:22</p> <p>18 in the area in which I focus my research, I couldn't 10:21:26</p> <p>19 even venture a guess. And it would be the same with 10:21:32</p> <p>20 gray marketing. 10:21:35</p> <p>21 Q. Well, if you don't know how many 10:21:36</p> <p>22 articles about gray marketing exist, how can you 10:21:43</p> <p>23 assert that there is a significant amount of the 10:21:47</p> <p>24 literature, as you do here, dealing with it in an 10:21:49</p>	<p>1 wouldn't be able to give you a percentage is because 10:22:52</p> <p>2 I haven't tallied up how many articles there are, 10:22:53</p> <p>3 how many of them deal with international gray 10:22:57</p> <p>4 marketing. It is my experience in not just in 10:23:01</p> <p>5 reviewing articles, but also in seeing the titles of 10:23:04</p> <p>6 articles and doing research that pulls up lists of 10:23:06</p> <p>7 articles, that a significant percentage of the 10:23:10</p> <p>8 articles that are out there deal with gray marketing 10:23:14</p> <p>9 in the international context. 10:23:18</p> <p>10 Q. That's your basis for this statement? 10:23:18</p> <p>11 A. Let me rephrase. They either deal 10:23:18</p> <p>12 specifically with gray marketing in the 10:23:18</p> <p>13 international context, or at least touch on the 10:23:20</p> <p>14 issue. 10:23:21</p> <p>15 Q. That's the basis for your statement? 10:23:21</p> <p>16 A. Yes. 10:23:23</p> <p>17 Q. And if you look at Exhibit 304, your 10:23:23</p> <p>18 rebuttal report, in Paragraph 4, which is on page 2, 10:23:33</p> <p>19 second sentence, you say, "The overwhelming 10:23:47</p> <p>20 attention national/international gray marketing 10:23:51</p> <p>21 receives in the academic literature." 10:23:56</p> <p>22 Is that also based on -- what is 10:24:00</p> <p>23 that sentence based on? 10:24:00</p> <p>24 A. The same. 10:24:01</p>



Page 50	Page 52
<p>1 Q. Okay. The eight articles you have 10:24:02</p> <p>2 listed and your research and reviewing any number of 10:24:03</p> <p>3 articles that you can't tell me how many and pulling 10:24:07</p> <p>4 things up on the internet? 10:24:10</p> <p>5 MR. COLLINS: Asked and answered. 10:24:11</p> <p>6 BY THE WITNESS: 10:24:12</p> <p>7 A. Correct. 10:24:13</p> <p>8 BY MR. BESSETTE: 10:24:13</p> <p>9 Q. Okay. Let me ask you to look at 10:24:29</p> <p>10 Exhibit 305, Mr. Frazier's report. 10:24:36</p> <p>11 MR. COLLINS: Off the record.</p> <p>12 MR. BESSETTE: Oh, is it time for a</p> <p>13 break?</p> <p>14 MR. COLLINS: No, no, I don't know.</p> <p>15 But you're reaching a point when you can stop, I</p> <p>16 presume? 10:24:42</p> <p>17 MR. BESSETTE: I can stop any time. 10:24:42</p> <p>18 THE WITNESS: If this is a good 10:24:44</p> <p>19 breaking point, it might be good. 10:24:46</p> <p>20 MR. BESSETTE: Sure, that's fine. 10:24:46</p> <p>21 (Break taken.) 10:24:46</p> <p>22 10:24:46</p> <p>23</p> <p>24</p>	<p>1 the title page of the international business 11:06:58</p> <p>2 transactions book from which I teach. And then the 11:07:01</p> <p>3 section which includes the materials on 11:07:04</p> <p>4 counterfeiting and gray marketing. 11:07:08</p> <p>5 Q. Okay. And that section I think is 11:07:11</p> <p>6 titled or numbered 9.2? 11:07:14</p> <p>7 A. Correct. 11:07:17</p> <p>8 Q. And is 9.3 a different section? 11:07:17</p> <p>9 A. Yes. 11:07:21</p> <p>10 Q. So just 9.2 is the portion of the 11:07:21</p> <p>11 course book that involves gray marketing? 11:07:27</p> <p>12 A. Correct. 11:07:33</p> <p>13 Q. And then there are supplemental 11:07:33</p> <p>14 materials as well, which you talked about earlier, 11:07:36</p> <p>15 which I understand do you pass out to your students 11:07:38</p> <p>16 as part of your class or is that just what you teach 11:07:42</p> <p>17 from? 11:07:45</p> <p>18 A. Yeah -- 11:07:45</p> <p>19 MR. COLLINS: Let him finish.</p> <p>20 THE WITNESS: Right, right, right.</p> <p>21 MR. COLLINS: Do you have the</p> <p>22 question?</p> <p>23 THE WITNESS: Yes, I do.</p> <p>24</p>
Page 51	Page 53
<p>1 BY MR. BESSETTE: 11:04:43</p> <p>2 Q. Professor, what are some of the other 11:04:58</p> <p>3 topics in the international business transaction 11:05:00</p> <p>4 course book? 11:05:02</p> <p>5 MR. COLLINS: Document speaks for 11:05:03</p> <p>6 itself. 11:05:05</p> <p>7 Go ahead. 11:05:05</p> <p>8 BY MR. BESSETTE: 11:05:07</p> <p>9 Q. And I apologize. We are going to have 11:05:07</p> <p>10 it soon. We are having copies made. 11:05:10</p> <p>11 MR. COLLINS: Off the record. 11:05:15</p> <p>12 (Off the record 11:05:19</p> <p>13 discussion.) 11:06:32</p> <p>14 (Exhibit No. 306 was 11:06:32</p> <p>15 marked for 11:06:32</p> <p>16 identification.) 11:06:33</p> <p>17 BY MR. BESSETTE: 11:06:33</p> <p>18 Q. All right. Professor, I'm handing you 11:06:34</p> <p>19 what the court reporter has marked as Exhibit 306. 11:06:34</p> <p>20 And for the record, would you just identify that, 11:06:38</p> <p>21 including the Bates numbers, which are printed at 11:06:41</p> <p>22 the bottom, from just the first one to the last one? 11:06:44</p> <p>23 A. The Bates Numbers OCH 0137 to OCH 11:06:47</p> <p>24 0199. And it is the front page or the first sort of 11:06:53</p>	<p>1 BY THE WITNESS:</p> <p>2 A. The supplemental materials are 11:07:51</p> <p>3 materials that I assign similarly to how I assign 11:07:52</p> <p>4 the book. The students are expected to purchase the 11:07:57</p> <p>5 materials in advance of the class. 11:08:00</p> <p>6 BY MR. BESSETTE: 11:08:01</p> <p>7 Q. Okay. How many times a year do you 11:08:01</p> <p>8 teach the international business transactions class? 11:08:05</p> <p>9 A. I teach it -- so far it has been once 11:08:07</p> <p>10 a year. That may change. 11:08:09</p> <p>11 Q. So, so far between '03 and the present 11:08:11</p> <p>12 it has been once a year? 11:08:14</p> <p>13 A. Correct. 11:08:16</p> <p>14 Q. And that module 9.2 and whatever 11:08:16</p> <p>15 supplemental materials dealing with gray market, how 11:08:20</p> <p>16 big a portion of that class that runs a semester is 11:08:24</p> <p>17 that? 11:08:29</p> <p>18 A. Typically we devote between three and 11:08:29</p> <p>19 four class sessions to these issues. 11:08:32</p> <p>20 Q. And then how much preparation work do 11:08:34</p> <p>21 you do to be able to teach those three or four 11:08:42</p> <p>22 classes that deal with the subject matter we are 11:08:45</p> <p>23 talking about, gray marketing? 11:08:47</p> <p>24 A. How much in time? 11:08:49</p>

Page 58

1 A. No. 11:13:53  
 2 Q. Okay. 11:13:54  
 3 MR. COLLINS: And we don't want you to 11:13:54  
 4 answer more than he asks, so good answer. 11:13:57  
 5 THE WITNESS: Right. 11:14:00  
 6 BY MR. BESSETTE: 11:14:00  
 7 Q. So let me just ask, on the licensing 11:14:01  
 8 you talked about licensing as it relates to 11:14:04  
 9 international business transactions, that's one 11:14:07  
 10 section or component of the class. Do you consider 11:14:09  
 11 yourself an expert in licensing in international 11:14:13  
 12 business transactions? 11:14:16  
 13 A. Sure. 11:14:17  
 14 Q. And that's based on the same criteria 11:14:18  
 15 that you've used before, you read materials, you 11:14:20  
 16 presented in your class, so you think you are an 11:14:22  
 17 expert? 11:14:24  
 18 A. Yes. 11:14:24  
 19 Q. Okay. Same thing with respect to 11:14:25  
 20 franchising in connection with the international 11:14:27  
 21 business transactions. Because it is in the class 11:14:30  
 22 and you teach it, do you feel that you are an expert 11:14:32  
 23 in franchising in connection with international 11:14:36  
 24 business transactions? 11:14:39

Page 59

1 A. Yes. 11:14:40  
 2 Q. Same question with respect to foreign 11:14:41  
 3 direct investment? 11:14:44  
 4 A. Yes. And I would say there are areas 11:14:44  
 5 in which I feel more and less comfortable. For 11:14:46  
 6 various reasons, I may have other pressing issues 11:14:50  
 7 that are going on during the time that I am 11:14:52  
 8 preparing for a class and may have read less or more 11:14:55  
 9 outside materials as a result. 11:15:00  
 10 Q. Is there any area that you can tell me 11:15:02  
 11 now in connection why the international business 11:15:06  
 12 transactions and the course book that you teach from 11:15:08  
 13 and whatever other materials you read to prepare, 11:15:08  
 14 that you do not consider yourself an expert in? 11:15:17  
 15 MR. COLLINS: In connection with this 11:15:17  
 16 particular course? 11:15:18  
 17 MR. BESSETTE: Yes. I thought I made 11:15:18  
 18 that clear. 11:15:19  
 19 BY THE WITNESS: 11:15:19  
 20 A. In connection with the course, no. 11:15:20  
 21 BY MR. BESSETTE: 11:15:21  
 22 Q. You also teach I think it is a 11:15:21  
 23 contracts class, right? 11:15:23  
 24 A. Correct. 11:15:24

Page 60

1 Q. Do you consider yourself an expert in 11:15:25  
 2 connection with the contracts that you teach? 11:15:29  
 3 A. Absolutely. 11:15:30  
 4 Q. And again, that's based on your 11:15:31  
 5 reviewing the course book and whatever other 11:15:33  
 6 materials that you use to prepare to teach law 11:15:38  
 7 students? 11:15:42  
 8 A. Yes. 11:15:42  
 9 Q. So, Professor, just I want to be 11:15:42  
 10 clear. Your expertise in gray marketing as it 11:16:33  
 11 relates to this case in which you are proffering 11:16:37  
 12 yourself as an expert in, is based on your being a 11:16:40  
 13 lawyer and teaching classes that contain gray 11:16:48  
 14 marketing subject areas and your reading the 11:16:51  
 15 materials to prepare for the class that you teach. 11:16:54  
 16 That's the basis for your expertise? 11:16:57  
 17 A. The materials that I teach, as well as 11:16:59  
 18 outside materials, yes. 11:17:02  
 19 Q. Now, I think before the break I asked 11:17:02  
 20 you to take a look at Paragraph 37 of Mr. Frazier's 11:17:10  
 21 report -- I'm sorry, it may be professor as well. 11:17:16  
 22 But Exhibit 305, Paragraph 37, it is on page 12. 11:17:16  
 23 Professor Frazier writes that -- I think it's the 11:17:31  
 24 second sentence -- that consumers shopping at Costco 11:17:38

Page 61

1 did not particularly care about pre- and post-sales 11:17:41  
 2 service availability at specialty and pro shops, and 11:17:45  
 3 sites, the Coughlan piece down there. Do you agree 11:17:51  
 4 with that statement? 11:17:53  
 5 MR. COLLINS: Excuse me. You mean 11:17:55  
 6 that one statement in isolation apart from the 11:17:55  
 7 paragraph and apart from the section? 11:18:00  
 8 MR. BESSETTE: Yes. 11:18:02  
 9 BY MR. BESSETTE: 11:18:02  
 10 Q. Do you agree with that statement? 11:18:03  
 11 MR. COLLINS: I will caution you, go 11:18:04  
 12 ahead and answer, but if you feel you need to read 11:18:06  
 13 the paragraph and read the section, you read them. 11:18:11  
 14 THE WITNESS: Uh-huh. I'll be right 11:18:11  
 15 with you. 11:18:13  
 16 BY THE WITNESS: 11:18:13  
 17 A. No, I don't. 11:18:16  
 18 BY MR. BESSETTE: 11:18:17  
 19 Q. Why not? 11:18:18  
 20 A. I think that what he says there is 11:18:18  
 21 essentially that nobody shopping -- what I read in 11:18:23  
 22 that sentence is that nobody shopping at Costco 11:18:26  
 23 would care about pre and post sales service. And I 11:18:30  
 24 think that's a stretch. I could imagine -- well, I 11:18:34

Page 70	Page 72
<p>1 (Record read.) 11:27:09</p> <p>2 MR. COLLINS: Now, Paul asked crisp 11:27:09</p> <p>3 questions. That was not necessarily the crispest. 11:27:12</p> <p>4 So make sure you understand the question before you 11:27:17</p> <p>5 answer. And Paul can say it again or we could have 11:27:19</p> <p>6 it read back again. If you understand it, go ahead 11:27:23</p> <p>7 and answer. 11:27:24</p> <p>8 THE WITNESS: I think I understand the 11:27:24</p> <p>9 question. 11:27:27</p> <p>10 BY THE WITNESS: 11:27:27</p> <p>11 A. Though my answer -- my answer takes 11:27:28</p> <p>12 issue with various parts of what you said. And I 11:27:32</p> <p>13 can either take issue with those in turn or you 11:27:37</p> <p>14 could break the question into a couple of parts. 11:27:40</p> <p>15 BY MR. BESSETTE: 11:27:42</p> <p>16 Q. Go ahead and answer it however you see 11:27:42</p> <p>17 fit. 11:27:45</p> <p>18 (Off the record 11:27:45</p> <p>19 discussion.) 11:28:17</p> <p>20 MR. COLLINS: Are you okay or do you 11:28:17</p> <p>21 need it read back again? 11:28:19</p> <p>22 MR. BESSETTE: She already said, Todd, 11:28:19</p> <p>23 that she understood. 11:28:19</p> <p>24 MR. COLLINS: No. We just had an 11:28:21</p>	<p>1 that the reason that they were experiencing 11:29:21</p> <p>2 declining sales was gray marketing. However, Adams 11:29:24</p> <p>3 Golf was experiencing a gray market problem, and 11:29:28</p> <p>4 that very much informed my analysis. 11:29:30</p> <p>5 Q. Again, I think the answer was 11:29:33</p> <p>6 confusing. Let me try to parse a couple other 11:29:34</p> <p>7 question. 11:29:34</p> <p>8 Did you undertake any analysis of 11:29:36</p> <p>9 the causes for Adams Golf's decline in sales in 11:29:40</p> <p>10 1998, the second half? 11:29:43</p> <p>11 A. Can you ask that again? 11:29:45</p> <p>12 Q. Did you undertake any analysis to 11:29:47</p> <p>13 determine what caused Adams Golf's decline in sales 11:29:51</p> <p>14 in the second half of 1998? 11:29:57</p> <p>15 A. Yes. 11:29:58</p> <p>16 Q. Tell me what analysis you undertook. 11:29:59</p> <p>17 A. I studied its gray market problem and 11:30:02</p> <p>18 made a determination of whether or not its gray 11:30:06</p> <p>19 market problem caused some of that decline. 11:30:08</p> <p>20 Q. What analysis did you undertake in 11:30:10</p> <p>21 particular? 11:30:13</p> <p>22 A. I applied the academic literature on 11:30:13</p> <p>23 gray marketing studies, the business strategies that 11:30:18</p> <p>24 Adams Golf employed, I superimposed that on the 11:30:22</p>
Page 71	Page 73
<p>1 interruption, Paul. She is entitled to hear the 11:28:23</p> <p>2 question again, which was confusing, if she wants 11:28:25</p> <p>3 to.</p> <p>4 MR. BESSETTE: Well, let's just --</p> <p>5 MR. COLLINS: If you're read, go ahead</p> <p>6 and answer.</p> <p>7 BY MR. BESSETTE:</p> <p>8 Q. Do you want it again?</p> <p>9 A. I'm okay. I'm fine.</p> <p>10 The first part of your question 11:28:30</p> <p>11 implied, I read -- I interpreted in what you said 11:28:31</p> <p>12 that academic literature is divorced from real life 11:28:37</p> <p>13 or reality. The academic literature that deals 11:28:41</p> <p>14 specifically with the effects of gray marketing on 11:28:45</p> <p>15 both on brand image and profitability or sales as a 11:28:48</p> <p>16 result is, in fact, empirically based. And so it is 11:28:52</p> <p>17 a summary and extrapolation of what happens in that 11:28:57</p> <p>18 rear world. 11:29:01</p> <p>19 In addition when -- so yes, I 11:29:02</p> <p>20 relied on that academic literature when I was 11:29:03</p> <p>21 studying the problem that Adams Golf had faced. And 11:29:08</p> <p>22 I want to make clear that had Adams Golf not had a 11:29:11</p> <p>23 gray market problem when Adams Golf was experiencing 11:29:15</p> <p>24 declining sales, I would have no reason to believe 11:29:18</p>	<p>1 academic literature on the causes of gray marketing, 11:30:25</p> <p>2 the various invitations that companies can make to 11:30:28</p> <p>3 gray marketers, and then saw that, in fact, Adams 11:30:33</p> <p>4 Golf had experienced a gray market problem and made 11:30:35</p> <p>5 a determination based on those factors. 11:30:35</p> <p>6 Q. And that's what led you to your 11:30:37</p> <p>7 conclusion that the decline in sales was caused in 11:30:40</p> <p>8 part by gray marketing? 11:30:43</p> <p>9 A. Yes. 11:30:45</p> <p>10 Q. Nothing else, just reading the 11:30:45</p> <p>11 academic literature and superimposing that on to the 11:30:47</p> <p>12 company's decline in sales? 11:30:52</p> <p>13 MR. COLLINS: Mischaracterize the 11:30:54</p> <p>14 testimony. 11:30:56</p> <p>15 BY THE WITNESS: 11:30:56</p> <p>16 A. On to Adams Golf's business model, 11:30:56</p> <p>17 it's strategies, and yes, the fact that it was 11:31:00</p> <p>18 actually experiencing a gray market problem and was 11:31:08</p> <p>19 experiencing a decline in sales. 11:31:10</p> <p>20 BY MR. BESSETTE: 11:31:13</p> <p>21 Q. So okay. In your analysis, did you 11:31:15</p> <p>22 attribute any other causes to Adams Golf's decline 11:31:17</p> <p>23 in sales in the second half of 1998 other than gray 11:31:20</p> <p>24 marketing? 11:31:23</p>



Page 78	Page 80
<p>1 Q. And prior to reading that, you had no 11:35:03</p> <p>2 understanding or did you, of consumer segmenting in 11:35:06</p> <p>3 the golf club market? 11:35:09</p> <p>4 MR. COLLINS: As she just testified, 11:35:13</p> <p>5 is that what you mean? 11:35:13</p> <p>6 MR. BESSETTE: No. 11:35:13</p> <p>7 MR. COLLINS: In connection with -- 11:35:14</p> <p>8 BY MR. BESSETTE: 11:35:14</p> <p>9 Q. Prior to reading the Harvard business 11:35:16</p> <p>10 school study, did you have any knowledge of the 11:35:18</p> <p>11 consumer segmenting in the golf club market? 11:35:18</p> <p>12 MR. COLLINS: Vague and ambiguous. 11:35:18</p> <p>13 BY THE WITNESS: 11:35:21</p> <p>14 A. The information that I would have in 11:35:21</p> <p>15 that respect would have come from reading documents 11:35:23</p> <p>16 in connection with this litigation. 11:35:26</p> <p>17 BY MR. BESSETTE: 11:35:28</p> <p>18 Q. Okay. Prior to this litigation, did 11:35:28</p> <p>19 you have any knowledge of consumer segmenting in the 11:35:31</p> <p>20 golf club market? 11:35:34</p> <p>21 MR. COLLINS: Vague and ambiguous. 11:35:36</p> <p>22 BY THE WITNESS: 11:35:36</p> <p>23 A. I had what I would characterize as a 11:35:38</p> <p>24 lay understanding of that. 11:35:39</p>	<p>1 high profit margin. And those would indicate that 11:36:32</p> <p>2 Adams Golf was trying to target the high end of the 11:36:35</p> <p>3 market. 11:36:40</p> <p>4 BY MR. BESSETTE: 11:36:40</p> <p>5 Q. Okay. And that high end of the 11:36:40</p> <p>6 market, where would this segment likely shop for the 11:36:42</p> <p>7 golf clubs? 11:36:46</p> <p>8 A. In the places that Adams Golf was 11:36:47</p> <p>9 hoping they would shop. 11:36:51</p> <p>10 Q. Pro shops, specialty stores, that sort 11:36:52</p> <p>11 of thing? 11:36:55</p> <p>12 A. Yes. 11:36:55</p> <p>13 Q. Which of the consumer segments is more 11:36:55</p> <p>14 likely to shop at Costco or other discount 11:36:58</p> <p>15 retailers? 11:37:01</p> <p>16 MR. COLLINS: Which of the two 11:37:01</p> <p>17 segments you referred to in the article a moment 11:37:02</p> <p>18 ago, is that what you mean? 11:37:05</p> <p>19 BY MR. BESSETTE: 11:37:05</p> <p>20 Q. Which of the customer segments that we 11:37:06</p> <p>21 are referring to would be most likely to shop in 11:37:08</p> <p>22 Costco or other discount retailers? 11:37:11</p> <p>23 A. That's impossible to say. 11:37:15</p> <p>24 Q. Why? 11:37:16</p>
Page 79	Page 81
<p>1 BY MR. BESSETTE: 11:35:40</p> <p>2 Q. Certainly not an expert understanding? 11:35:41</p> <p>3 A. No. 11:35:42</p> <p>4 Q. And now that you have read litigation 11:35:42</p> <p>5 and read the Harvard business school study, do you 11:35:47</p> <p>6 have any view as to what customer segment Adams Golf 11:35:50</p> <p>7 was targeting with the Tight Lies? 11:35:55</p> <p>8 MR. COLLINS: Vague and ambiguous. 11:35:57</p> <p>9 BY THE WITNESS: 11:36:00</p> <p>10 A. Yeah. I'm not sure exactly what you 11:36:01</p> <p>11 mean by the question. 11:36:01</p> <p>12 BY MR. BESSETTE: 11:36:02</p> <p>13 Q. What don't you understand about it? 11:36:02</p> <p>14 A. I'm not sure -- well, if you can 11:36:02</p> <p>15 actually just restate the question that will be 11:36:07</p> <p>16 helpful. 11:36:07</p> <p>17 Q. Can you say which of the customer 11:36:09</p> <p>18 segments listed in the Harvard business school study 11:36:11</p> <p>19 that Adams Golf was targeting? 11:36:15</p> <p>20 MR. COLLINS: Foundation. 11:36:19</p> <p>21 BY THE WITNESS: 11:36:20</p> <p>22 A. It appears to me from the documents 11:36:20</p> <p>23 that I've read that Adams Golf wanted to maintain 11:36:22</p> <p>24 high prestige brand, wanted to be able to maintain a 11:36:27</p>	<p>1 A. I think there is not necessarily a 11:37:17</p> <p>2 direct correlation between avid golfers and lack of 11:37:19</p> <p>3 price sensitivity. 11:37:24</p> <p>4 Q. What is that based on? 11:37:25</p> <p>5 A. Based on living in the world. People 11:37:27</p> <p>6 like to find a bargain. So even though a person may 11:37:29</p> <p>7 be an avid golfer, they may not have so much 11:37:32</p> <p>8 disposable income that they wouldn't seek the deal. 11:37:36</p> <p>9 Q. So you don't think it is more likely 11:37:36</p> <p>10 that a certain consumer segment would shop at Costco 11:37:39</p> <p>11 in terms of the golf market? 11:37:45</p> <p>12 A. No. 11:37:47</p> <p>13 Q. How likely is it in your view that a 11:37:47</p> <p>14 beginning golfer would go to a pro shop and pay full 11:38:02</p> <p>15 price for a club? 11:38:06</p> <p>16 A. That they would pay full price for a 11:38:07</p> <p>17 club? 11:38:10</p> <p>18 Q. How likely is a customer in the 11:38:10</p> <p>19 beginning golfer segment to go to a golf shop and 11:38:13</p> <p>20 pay full price for a club? 11:38:17</p> <p>21 A. I see two parts in your question, and 11:38:19</p> <p>22 I will answer them both. I think it is likely that 11:38:21</p> <p>23 a beginning golfer would like to find as much 11:38:24</p> <p>24 information as they could about the products that 11:38:28</p>



Page 94	Page 96
<p>1 be a cure that most manufacturers would hope for. 11:52:59</p> <p>2 It would be a cure that would essentially mean that 11:53:02</p> <p>3 their product is no longer in demand. 11:53:06</p> <p>4 Q. Now, what do you mean by "proactive 11:53:08</p> <p>5 and reactive steps" in that sentence? 11:53:20</p> <p>6 A. Gray market literature often refers to 11:53:23</p> <p>7 steps that manufacturers can take as proactive steps 11:53:25</p> <p>8 and reactive steps. Proactive steps would be steps 11:53:29</p> <p>9 like ensuring that they have business strategies in 11:53:34</p> <p>10 place that ward off gray marketers. 11:53:37</p> <p>11 They might also include strategies 11:53:44</p> <p>12 that Adams later adopted, like serializing golf 11:53:47</p> <p>13 clubs or serializing products. They might include 11:53:53</p> <p>14 ensuring that there is little to no price 11:53:55</p> <p>15 differentiation, so that the arbitrage that gray 11:53:58</p> <p>16 marketing depends on can't occur. They might ensure 11:54:01</p> <p>17 that they are counting for currency fluctuations, 11:54:06</p> <p>18 and ensuring that there is little space for 11:54:09</p> <p>19 arbitrage there, as well. Those would be typical 11:54:12</p> <p>20 proactive steps. 11:54:16</p> <p>21 Reactive steps would include 11:54:17</p> <p>22 making requests to the customs service to stop 11:54:19</p> <p>23 products from coming into the country. They might 11:54:26</p> <p>24 include issuing -- I am sorry -- litigating against 11:54:29</p>	<p>1 proactive or reactive steps. 11:55:23</p> <p>2 MR. COLLINS: Foundation, compound. 11:55:25</p> <p>3 Please answer. 11:55:28</p> <p>4 BY THE WITNESS: 11:55:28</p> <p>5 A. I don't feel comfortable answering the 11:55:29</p> <p>6 question the way that it was posed, because there is 11:55:30</p> <p>7 a timeline -- there is a timeline to the steps that 11:55:33</p> <p>8 Adams Golf decided to take in managing its gray 11:55:38</p> <p>9 market problem. So I am not entirely comfortable 11:55:43</p> <p>10 with answering the question the way it was asked. 11:55:47</p> <p>11 BY MR. BESSETTE: 11:55:49</p> <p>12 Q. I don't understand why. 11:55:49</p> <p>13 A. I can explain that. You are asking me 11:55:50</p> <p>14 to say whether Adams Golf -- whether the steps they 11:55:54</p> <p>15 took were proactive or reactive. And although some 11:55:58</p> <p>16 of the steps that Adams Golf may have taken may be 11:56:05</p> <p>17 steps that are characterized often in the literature 11:56:10</p> <p>18 as proactive steps, all of them were taken in 11:56:13</p> <p>19 reaction to gray marketing. I didn't see any 11:56:17</p> <p>20 evidence that Adams Golf did take any proactive 11:56:20</p> <p>21 steps in the sense of steps taken before its gray 11:56:24</p> <p>22 marketing problem commenced. 11:56:28</p> <p>23 Q. Okay. So if a company takes steps to 11:56:29</p> <p>24 manage gray marketing after gray marketing has 11:56:34</p>
Page 95	Page 97
<p>1 the gray marketer or the company that is selling 11:54:32</p> <p>2 goods through the gray market, or trying, though 11:54:35</p> <p>3 there are not very many avenues for that at this 11:54:39</p> <p>4 point. Those would be some reactive steps. They 11:54:44</p> <p>5 might also -- well, those would be some reactive 11:54:47</p> <p>6 steps. There are more. 11:54:49</p> <p>7 Q. What strategies did Adams use to 11:54:49</p> <p>8 manage the gray market that it was experiencing? 11:54:53</p> <p>9 MR. COLLINS: Are you asking 11:54:55</p> <p>10 proactive, reactive or both? 11:54:57</p> <p>11 BY MR. BESSETTE: 11:54:59</p> <p>12 Q. I am going to ask you to tell me what 11:55:00</p> <p>13 the activities are and then classify them as 11:55:02</p> <p>14 proactive or reactive. 11:55:05</p> <p>15 MR. COLLINS: Foundation. 11:55:08</p> <p>16 Go ahead. 11:55:09</p> <p>17 BY THE WITNESS: 11:55:10</p> <p>18 A. I'm sorry, I think I'm going to ask 11:55:10</p> <p>19 you to restate the question, just because I'm not 11:55:10</p> <p>20 sure exactly what you are asking. 11:55:12</p> <p>21 BY MR. BESSETTE: 11:55:13</p> <p>22 Q. What I want to know is what steps did 11:55:13</p> <p>23 Adams Golf take to manage the gray market it was 11:55:15</p> <p>24 experiencing, and tell me if you think those were 11:55:20</p>	<p>1 already appeared, whatever steps it takes are 11:56:37</p> <p>2 reactive not proactive. Is that what I understand? 11:56:40</p> <p>3 A. Not necessarily. 11:56:44</p> <p>4 Q. Then what is the distinction? 11:56:45</p> <p>5 A. Those steps are taken in reaction to 11:56:46</p> <p>6 the gray marketing that has already occurred. Those 11:56:49</p> <p>7 steps might be proactive in the sense of trying to 11:56:53</p> <p>8 prevent future gray market activities from 11:56:56</p> <p>9 occurring. 11:56:59</p> <p>10 Q. So you are saying an activity that a 11:56:59</p> <p>11 company might employ could be both proactive and 11:57:04</p> <p>12 reactive? 11:57:07</p> <p>13 A. Yes. 11:57:08</p> <p>14 Q. And have you analyzed the steps Adams 11:57:08</p> <p>15 Golf in particular took to manage gray marketing and 11:57:16</p> <p>16 have you considered whether they were proactive or 11:57:19</p> <p>17 reactive or both? 11:57:22</p> <p>18 MR. COLLINS: Can you give us a time 11:57:23</p> <p>19 period or do you want a general -- 11:57:25</p> <p>20 BY MR. BESSETTE: 11:57:26</p> <p>21 Q. In the whole thing that you looked at. 11:57:26</p> <p>22 MR. COLLINS: Overbroad. 11:57:28</p> <p>23 BY THE WITNESS: 11:57:28</p> <p>24 A. Yes. 11:57:31</p>

Page 98	Page 100
<p>1 BY MR. BESSETTE: 11:57:31</p> <p>2 Q. Okay. Well, then, back to my first 11:57:32</p> <p>3 question. Would you tell me the steps that you know 11:57:33</p> <p>4 Adams Golf took and whether you characterize them as 11:57:36</p> <p>5 proactive, reactive or maybe both? 11:57:41</p> <p>6 MR. COLLINS: Overbroad as there is no 11:57:42</p> <p>7 time period. 11:57:45</p> <p>8 Go ahead. 11:57:45</p> <p>9 BY THE WITNESS: 11:57:45</p> <p>10 A. Let me tell you the reason that I am 11:57:46</p> <p>11 hesitating in answering the question. It's because 11:57:48</p> <p>12 I think that there is sort of a step of omission 11:57:49</p> <p>13 that happened before the gray marketing started to 11:57:52</p> <p>14 occur, which was a step of designing a business 11:57:56</p> <p>15 strategy that was particularly attractive to gray 11:58:00</p> <p>16 marketers without putting in place any sort of 11:58:04</p> <p>17 prohibitors on gray market activity. 11:58:08</p> <p>18 Once the gray marketing began at 11:58:12</p> <p>19 Adams Golf, then the company did begin to react 11:58:16</p> <p>20 mostly through what would be characterized in the 11:58:22</p> <p>21 literature as proactive steps. 11:58:26</p> <p>22 BY MR. BESSETTE: 11:58:29</p> <p>23 Q. Are there demand side strategies and 11:58:29</p> <p>24 supply side strategies to deal with gray marketing? 11:58:40</p>	<p>1 review that -- were you familiar with that in part 11:59:54</p> <p>2 of your course work or just in connection with your 11:59:57</p> <p>3 work on this case? 11:59:59</p> <p>4 A. I had seen the article before. 12:00:00</p> <p>5 Q. You used it in your course work? 12:00:02</p> <p>6 A. I used it -- I am taking issue with 12:00:05</p> <p>7 the word "used." I read it before. 12:00:11</p> <p>8 Q. Okay. Now, I can get the article if 12:00:13</p> <p>9 you need it, but are you familiar that the author 12:00:34</p> <p>10 lists offering rebates as a proactive demand side 12:00:37</p> <p>11 strategy to deal with gray marketing? 12:00:42</p> <p>12 A. Yes. 12:00:45</p> <p>13 Q. Did Adams offer rebates to retailers 12:00:45</p> <p>14 to combat the gray marketing? 12:00:49</p> <p>15 A. They put in place a couple of 12:00:52</p> <p>16 programs, one of them was a fairly complicated 12:00:55</p> <p>17 program which might be categorized as a rebate. 12:00:59</p> <p>18 Q. So in your opinion, is this a reactive 12:01:02</p> <p>19 or proactive strategy? 12:01:05</p> <p>20 A. It was in reaction to gray marketing 12:01:07</p> <p>21 that was already occurring. It was a proactive 12:01:10</p> <p>22 strategy, if you put it into the classification that 12:01:13</p> <p>23 are typically found in the literature. 12:01:16</p> <p>24 Q. Well, what do you do? How do you 12:01:18</p>
Page 99	Page 101
<p>1 A. Let me think about that for just one 11:58:44</p> <p>2 second, because that's not the way that I think 11:58:51</p> <p>3 about it. 11:58:52</p> <p>4 Yes. 11:58:53</p> <p>5 Q. Give me some examples of both, if you 11:58:53</p> <p>6 would. 11:58:56</p> <p>7 A. Okay. On the demand side, educated 11:58:56</p> <p>8 consumers about the gray market and about the 11:58:59</p> <p>9 potential hazards of buying goods through gray 11:59:01</p> <p>10 market channels would be an example of demand side 11:59:06</p> <p>11 steps to combat gray market activity. 11:59:12</p> <p>12 The supply side we have already 11:59:15</p> <p>13 talked about some of them, serializing products, 11:59:17</p> <p>14 ensuring that price differentiation is kept to a 11:59:20</p> <p>15 minimum, decreasing profit -- sort of keeping profit 11:59:24</p> <p>16 margins within reason would be another good example. 11:59:29</p> <p>17 There are more. 11:59:34</p> <p>18 Q. Are you familiar with the Berman 11:59:35</p> <p>19 article you list in your materials? 11:59:43</p> <p>20 A. Yes. 11:59:45</p> <p>21 Q. It is entitled "Strategies to Combat 11:59:46</p> <p>22 the Sale of Gray Market Goods"? 11:59:51</p> <p>23 A. Correct. 11:59:53</p> <p>24 Q. Okay. Now, let me ask you, did you 11:59:54</p>	<p>1 classify it? 12:01:19</p> <p>2 A. A reaction that is a proactive step to 12:01:20</p> <p>3 try to eliminate future gray marketing. 12:01:23</p> <p>4 Q. So it is a proactive strategy? 12:01:26</p> <p>5 A. Taking in reaction to existing gray 12:01:29</p> <p>6 marketing. 12:01:32</p> <p>7 MR. COLLINS: When you reach a point, 12:01:33</p> <p>8 I want to stop for a moment. 12:01:35</p> <p>9 MR. BESSETTE: Okay. 12:01:36</p> <p>10 BY MR. BESSETTE: 12:01:45</p> <p>11 Q. Did you conclude in your report that 12:01:45</p> <p>12 Adams Golf took no deliberate proactive steps to 12:01:48</p> <p>13 combat gray marketing? 12:01:53</p> <p>14 MR. COLLINS: Speaks for itself. 12:01:55</p> <p>15 BY THE WITNESS: 12:01:56</p> <p>16 A. Could you point to that paragraph? 12:01:57</p> <p>17 BY MR. BESSETTE: 12:02:00</p> <p>18 Q. I think it is Paragraph 29 of your 12:02:01</p> <p>19 rebuttal report. Let's just look. Yes. Third 12:02:03</p> <p>20 sentence, Paragraph 29 of the rebuttal report, which 12:02:19</p> <p>21 is Exhibit 304. "Despite the prevalence of gray 12:02:23</p> <p>22 market activity in certain sectors of the golf 12:02:27</p> <p>23 industry, the company appears to have taken no 12:02:31</p> <p>24 deliberate proactive steps to prevent a gray 12:02:31</p>

Page 102	Page 104
<p>1 marketing problem from gaining a foothold at Adams." 12:02:39</p> <p>2 A. Yes. The company appears to have 12:02:39</p> <p>3 taken no proactive steps from preventing a gray 12:02:43</p> <p>4 market problem from arising at Adams. 12:02:48</p> <p>5 Q. Well, that's not what you say. You 12:02:51</p> <p>6 say from gaining a foothold. 12:02:51</p> <p>7 A. From gaining a foothold. They took no 12:02:53</p> <p>8 steps prior to the gray market problem arising at 12:02:55</p> <p>9 Adams. 12:02:57</p> <p>10 Q. Did Adams Golf take any proactive 12:02:57</p> <p>11 steps to manage the gray marketing that was 12:03:01</p> <p>12 appearing? 12:03:03</p> <p>13 MR. COLLINS: Asked and answered 12:03:03</p> <p>14 several times. 12:03:03</p> <p>15 BY THE WITNESS: 12:03:04</p> <p>16 A. After the gray marketing occurred, 12:03:04</p> <p>17 yes. 12:03:06</p> <p>18 BY MR. BESSETTE: 12:03:06</p> <p>19 Q. Now, the author in that same article 12:03:06</p> <p>20 lists labeling products as a proactive supply side 12:03:16</p> <p>21 strategy. Did Adams Golf do that to the best of 12:03:20</p> <p>22 your knowledge? 12:03:23</p> <p>23 A. After the gray market problem arose, 12:03:23</p> <p>24 yes. 12:03:26</p>	<p>1 happening, right? 12:04:25</p> <p>2 A. Gray marketing is already happening in 12:04:26</p> <p>3 the world, yes. It does not assume that gray 12:04:27</p> <p>4 marketing is happening at any one firm, no. 12:04:31</p> <p>5 Q. Have you ever seen in the academic 12:04:34</p> <p>6 literature a category that you are testifying to 12:04:37</p> <p>7 today which is proactive steps that are a reaction 12:04:41</p> <p>8 to gray marketing at that company? 12:04:44</p> <p>9 A. Yes. I think any literature that 12:04:46</p> <p>10 deals with steps the companies can take to stem gray 12:04:49</p> <p>11 market problems and to keep them at bay deals with 12:04:55</p> <p>12 both the potential of gray marketing arising for a 12:05:01</p> <p>13 particular company. It also deals with the 12:05:05</p> <p>14 possibility that gray marketing has already arisen 12:05:07</p> <p>15 at a company, and a company is now looking for a way 12:05:10</p> <p>16 to diminished that gray market activity over time. 12:05:13</p> <p>17 Q. Right. So proactive steps assume both 12:05:15</p> <p>18 gray marketing is happening in the world, and in 12:05:18</p> <p>19 that particular company, do they not? 12:05:20</p> <p>20 A. No. 12:05:22</p> <p>21 MR. COLLINS: Objection, vague. 12:05:22</p> <p>22 BY THE WITNESS: 12:05:23</p> <p>23 A. No. Not necessarily. You can imagine 12:05:24</p> <p>24 a situation in which a manufacturer who knows that 12:05:26</p>
Page 103	Page 105
<p>1 Q. Is this an example of reactive or 12:03:26</p> <p>2 proactive strategy? 12:03:30</p> <p>3 A. Typically categorized in the 12:03:30</p> <p>4 literature as a proactive step. 12:03:31</p> <p>5 Q. And how do you characterize it? 12:03:31</p> <p>6 A. A reaction to a gray matter problem 12:03:33</p> <p>7 that had already arisen. It is a proactive step. 12:03:37</p> <p>8 Q. In the literature, do they -- have you 12:03:40</p> <p>9 ever read anything that characterizes the way you do 12:03:42</p> <p>10 a proactive step, whether it's before or after gray 12:03:46</p> <p>11 marketing has occurred? Is it any different? 12:03:49</p> <p>12 A. I couldn't tell you for sure whether I 12:03:50</p> <p>13 have seen it characterized that way. It is -- 12:03:52</p> <p>14 certainly the literature that is out there to try to 12:03:55</p> <p>15 inform manufacturers about how to prevent or stop 12:03:57</p> <p>16 gray market problems assumes that manufacturers are 12:04:01</p> <p>17 concerned about a gray market problem. 12:04:04</p> <p>18 Q. Well, proactive steps also assume that 12:04:06</p> <p>19 gray marketing is going on, do they not, in the 12:04:10</p> <p>20 literature? 12:04:14</p> <p>21 A. In the world, yes. 12:04:14</p> <p>22 Q. So when the academic literature you 12:04:15</p> <p>23 read talks about proactive steps to manage gray 12:04:18</p> <p>24 marketing, by definition gray marketing is already 12:04:21</p>	<p>1 they have a product and a business model that is 12:05:29</p> <p>2 particularly attractive to gray marketers, that they 12:05:32</p> <p>3 are likely to have a gray marketing problem given 12:05:36</p> <p>4 their business model and given the nature of their 12:05:39</p> <p>5 product. Being aware that gray marketing exists in 12:05:43</p> <p>6 the world and, therefore, taking proactive steps to 12:05:47</p> <p>7 ensure that gray marketing never occurs or trying to 12:05:50</p> <p>8 ensure that gray marketing never occurs within their 12:05:53</p> <p>9 company. 12:05:57</p> <p>10 BY MR. BESSETTE: 12:05:58</p> <p>11 Q. Was Adams Golf's offering of rebates a 12:05:58</p> <p>12 deliberate proactive step to manage its gray 12:06:03</p> <p>13 marketing problem? 12:06:07</p> <p>14 A. Can you ask the question again? I'm 12:06:08</p> <p>15 sorry. 12:06:08</p> <p>16 MR. BESSETTE: Can you read it back, 12:06:08</p> <p>17 please? 12:06:08</p> <p>18 (Record read.) 12:06:21</p> <p>19 BY THE WITNESS: 12:06:21</p> <p>20 A. It was -- 12:06:22</p> <p>21 MR. COLLINS: Excuse me. Asked and 12:06:22</p> <p>22 answered. 12:06:22</p> <p>23 Go ahead. 12:06:24</p> <p>24</p>



Page 106

1 BY THE WITNESS: 12:06:24  
 2 A. It was a step that was taken in 12:06:25  
 3 reaction to the gray market having already arisen at 12:06:26  
 4 Adams Golf, and it was a proactive step. 12:06:32  
 5 BY MR. BESSETTE: 12:06:35  
 6 Q. And was Adams Golf's efforts to label 12:06:35  
 7 its products with serial numbers a proactive supply 12:06:40  
 8 side strategy to combat or deal with its existing 12:06:40  
 9 gray marketing problem? 12:06:45  
 10 A. Yes. 12:06:46  
 11 MR. COLLINS: Paul, if you have 12:06:56  
 12 reached a point to pause. 12:06:57  
 13 MR. BESSETTE: Oh, this is fine. I 12:07:18  
 14 forgot. That's fine. 12:07:18  
 15 (Off the record 12:07:18  
 16 discussion.) 12:07:18  
 17 BY MR. BESSETTE: 12:07:18  
 18 Q. Let's see. Professor Frazier's 12:07:20  
 19 report, 305, Paragraph 11, first sentence. "Gray 12:07:24  
 20 market activities are commonplace in a wide variety 12:07:42  
 21 of industries from expensive consumer durables like 12:07:45  
 22 cars to inexpensive household products like 12:07:50  
 23 cosmetics." Do you agree with that statement? 12:07:53  
 24 A. Yes. 12:07:55

Page 107

1 Q. In Paragraph 5A of your rebuttal 12:07:56  
 2 report, and I think you do it a couple of other 12:09:53  
 3 places too, but that's the one I have. I guess it 12:09:56  
 4 is the last sentence. You say, "In addition," and 12:10:19  
 5 then A. And what you are talking about there is 12:10:23  
 6 gray marketing. Saying that gray marketing -- it 12:10:26  
 7 was widely known that gray marketing was taking 12:10:29  
 8 place in certain sectors of the golf industry. What 12:10:31  
 9 did you mean by that? 12:10:34  
 10 MR. COLLINS: Read to yourself the 12:10:36  
 11 whole subparagraph, or if you feel necessary, the 12:10:38  
 12 whole paragraph, please. 12:10:40  
 13 BY THE WITNESS: 12:10:42  
 14 A. Okay. As you know, I teach a section 12:10:59  
 15 on gray marketing and use the golf industry as an 12:11:01  
 16 example. Specifically, I use Callaway as an example 12:11:05  
 17 of gray marketing, in addition to others. It is 12:11:08  
 18 certainly not the case that gray marketing was a 12:11:14  
 19 uniform problem in the golf industry. It affected 12:11:17  
 20 different companies differently. 12:11:21  
 21 BY MR. BESSETTE: 12:11:22  
 22 Q. That's what you meant? 12:11:22  
 23 A. Yes. 12:11:25  
 24 Q. What I want to know is what you meant 12:11:26

Page 108

1 when you said it was widely known that gray 12:11:28  
 2 marketing was taking place in certain sectors of the 12:11:31  
 3 industry? 12:11:35  
 4 A. I meant that gray marketing was 12:11:35  
 5 occurring in certain sectors of the industry. I'm 12:11:35  
 6 not sure what's unclear. 12:11:37  
 7 Q. How was it widely known? 12:11:37  
 8 A. The world is -- well, let me back up. 12:11:39  
 9 Consumers become aware of gray marketing through 12:11:44  
 10 seeing golf clubs available through gray market 12:11:47  
 11 chains, big box retailers, etcetera. And also in 12:11:54  
 12 the golf industry, my understanding is that word 12:11:58  
 13 spreads quickly and that would be another way. 12:12:02  
 14 Q. So your understanding, what is that 12:12:04  
 15 based on? 12:12:08  
 16 A. What I have read about the golf 12:12:09  
 17 industry in connection with this litigation. 12:12:11  
 18 Q. Okay. Any other knowledge about the 12:12:13  
 19 golf industry other than what you have read in this 12:12:15  
 20 litigation? 12:12:18  
 21 A. Do I know anything else about the golf 12:12:20  
 22 industry other than what I have read in connection 12:12:23  
 23 with this litigation? Is that the question? 12:12:24  
 24 Q. Well, I will ask her to repeat my 12:12:26

Page 109

1 question. 12:12:26  
 2 (Record read.) 12:12:26  
 3 BY THE WITNESS: 12:12:26  
 4 A. I guess I just don't understand. Do I 12:12:36  
 5 have any other knowledge about the golf industry? 12:12:39  
 6 BY MR. BESSETTE: 12:12:42  
 7 Q. Let me ask you this: What was your 12:12:42  
 8 level of knowledge about the golf industry prior to 12:12:43  
 9 you teaching a class that had gray marketing in a 12:12:46  
 10 subset, you know, gray marketing as it related to 12:12:49  
 11 the golf industry? What was your knowledge? 12:12:51  
 12 A. No more than a layperson. 12:12:54  
 13 Q. And now it is more because of the 12:12:56  
 14 litigation that we are in and the materials that you 12:12:59  
 15 have read about it? 12:13:02  
 16 A. Yes. 12:13:04  
 17 Q. Paragraph 1 of your rebuttal report, 12:13:05  
 18 1A actually, you say that you have been asked by 12:14:05  
 19 plaintiffs counsel to provide your opinions 12:14:14  
 20 regarding the expert reports of Stephen Grace and 12:14:15  
 21 Chris James to the extent such reports purport to 12:14:19  
 22 present the characteristics of gray marketing and 12:14:23  
 23 the effects the gray market can have on brand name 12:14:26  
 24 products on the trademark owners or manufacturers 12:14:29



Page 214	Page 216
<p>1 anywhere? 15:18:00</p> <p>2 MR. COLLINS: Speak for themselves. 15:18:01</p> <p>3 BY THE WITNESS: 15:18:03</p> <p>4 A. I don't recall. 15:18:04</p> <p>5 BY MR. BESSETTE: 15:18:04</p> <p>6 Q. Well, you reviewed it I guess in 15:18:05</p> <p>7 connection with your work in this case, so is it 15:18:07</p> <p>8 detailed somewhere in your reports? 15:18:09</p> <p>9 MR. COLLINS: She just said she 15:18:11</p> <p>10 doesn't know. 15:18:14</p> <p>11 BY THE WITNESS: 15:18:14</p> <p>12 A. I don't recall. I reviewed a lot of 15:18:15</p> <p>13 documents. I didn't cite them all. 15:18:17</p> <p>14 BY MR. BESSETTE: 15:18:19</p> <p>15 Q. Why didn't you cite them all, by the 15:18:19</p> <p>16 way? 15:18:21</p> <p>17 A. My understanding is that there is some 15:18:21</p> <p>18 limitation on the page limit of the report. If I 15:18:25</p> <p>19 were to cite every document that I received, I can't 15:18:31</p> <p>20 even imagine how long the report would have been. 15:18:34</p> <p>21 Q. What is this understanding of some 15:18:36</p> <p>22 page limit? 15:18:39</p> <p>23 A. It is my own understanding from 15:18:40</p> <p>24 talking to people who have worked in litigation 15:18:43</p>	<p>1 report. 15:19:55</p> <p>2 A. No, no. 15:19:56</p> <p>3 Q. Okay. 15:19:56</p> <p>4 A. No, no, no. I set forth all the 15:19:56</p> <p>5 documents in my report early on in the report. 15:19:58</p> <p>6 Q. Okay. 15:19:58</p> <p>7 A. There I stated that I have reviewed 15:20:02</p> <p>8 all the exhibits that I received at that time. I 15:20:03</p> <p>9 did not cite every one of those exhibits. 15:20:05</p> <p>10 Q. So the document is, according to your 15:20:08</p> <p>11 report, has to be an exhibit in the deposition? 15:20:33</p> <p>12 A. Can you say that again? 15:20:37</p> <p>13 Q. Yeah. On page 4 of your report, this 15:20:39</p> <p>14 is where you list the documents that you reviewed 15:20:43</p> <p>15 and/or relied on, okay. And the first bullet is 15:20:45</p> <p>16 depositions and transcripts and exhibits of all 15:20:54</p> <p>17 deponents except plaintiffs. Then there are other 15:20:57</p> <p>18 declarations in the Costco documents, a Callaway 10K 15:21:00</p> <p>19 and an expert report from Alan Miller. So there are 15:21:04</p> <p>20 no individual documents listed. 15:21:08</p> <p>21 So my question is, since you don't 15:21:11</p> <p>22 have any individual documents listed, and you don't 15:21:12</p> <p>23 cite it anywhere individually in your report, I 15:21:16</p> <p>24 suppose it has to be an exhibit to a deposition 15:21:18</p>
Page 215	Page 217
<p>1 previously about what the standard practice is of 15:18:48</p> <p>2 expert's reports. 15:18:50</p> <p>3 Q. Well, how did you decide which 15:18:51</p> <p>4 documents to include -- to include in your report 15:18:53</p> <p>5 detailing which ones they were and which ones you 15:18:58</p> <p>6 didn't? How did you decide which ones to include? 15:19:01</p> <p>7 A. I read them. I looked for all 15:19:03</p> <p>8 documents that appeared to in any way touch on gray 15:19:05</p> <p>9 marketing, specifically on the impact that gray 15:19:10</p> <p>10 marketing was having on the company. I also looked 15:19:13</p> <p>11 for documents that revealed information about the 15:19:16</p> <p>12 company's business strategies and business model and 15:19:18</p> <p>13 strategies for growth in order to be able to 15:19:22</p> <p>14 determine whether or not the company was poised to 15:19:25</p> <p>15 become -- to avail itself of the gray market. 15:19:28</p> <p>16 Q. Well, no, no. I am sorry. Maybe I 15:19:34</p> <p>17 wasn't clear on my question. 15:19:37</p> <p>18 My question is, you are required 15:19:38</p> <p>19 to list the documents that you reviewed, whether you 15:19:40</p> <p>20 relied on them or not. 15:19:45</p> <p>21 A. Uh-huh. 15:19:46</p> <p>22 Q. And maybe I am misunderstanding, but 15:19:47</p> <p>23 what I am hearing is that you reviewed some 15:19:50</p> <p>24 documents that you have not set forth in your 15:19:53</p>	<p>1 transcript, because otherwise you haven't listed all 15:21:20</p> <p>2 the documents you have reviewed or relied on. 15:21:23</p> <p>3 A. My understanding of the exhibits that 15:21:25</p> <p>4 I received was that they were all in connection with 15:21:27</p> <p>5 deposition transcripts. 15:21:30</p> <p>6 Q. And that's what I asked you. 15:21:31</p> <p>7 MR. COLLINS: That's what she 15:21:33</p> <p>8 answered. 15:21:36</p> <p>9 MR. BESSETTE: I don't think I got an 15:21:36</p> <p>10 answer before just now. 15:21:38</p> <p>11 MR. COLLINS: Well, I am glad to tell 15:21:40</p> <p>12 you, if this is helpful, that we gave her all the 15:21:41</p> <p>13 deposition transcripts. 15:21:43</p> <p>14 MR. BESSETTE: Okay. I just want 15:21:43</p> <p>15 to -- 15:21:43</p> <p>16 MR. COLLINS: And all of the 15:21:44</p> <p>17 deposition transcript exhibits. And I don't recall 15:21:45</p> <p>18 any other document -- I don't know of any documents 15:21:47</p> <p>19 that we provided that aren't listed here. 15:21:48</p> <p>20 MR. BESSETTE: Okay. 15:21:50</p> <p>21 BY MR. BESSETTE: 15:21:51</p> <p>22 Q. Now, go to page -- I'm sorry -- 15:22:02</p> <p>23 Paragraph 27 of your initial report. You say, low 15:22:04</p> <p>24 sales force morale is another common effect of gray 15:22:19</p>

Page 218

1 market activity, and then you cite Barney Adams's 15:22:24  
 2 memo of August 14, which is Exhibit 57, where among 15:22:27  
 3 other comments, he states that the staff had very 15:22:32  
 4 low morale, including having no faith in their 15:22:37  
 5 management. Do you have any knowledge whether the 15:22:40  
 6 low morale that Mr. Adams is referring to in that 15:22:42  
 7 memo had anything to do with gray marketing? 15:22:45  
 8 A. I don't. I thought it was interesting 15:22:48  
 9 that this is one of the common effects of gray 15:22:50  
 10 market activity, and it was, itself, present within 15:22:53  
 11 Adams Golf. 15:22:58  
 12 Q. But you are not giving the opinion or 15:22:59  
 13 it is not part of your conclusion that there is a 15:23:02  
 14 cause and effect relationship between gray marketing 15:23:04  
 15 and a low morale? 15:23:08  
 16 A. I am not making the opinion that it 15:23:09  
 17 necessarily caused the low morale. 15:23:13  
 18 Q. Is it your opinion that it had 15:23:16  
 19 anything to do with the low morale? 15:23:18  
 20 A. I don't know with certainty, no. 15:23:37  
 21 Q. Do you know at all or are you just 15:23:46  
 22 speculating? 15:23:50  
 23 MR. COLLINS: Asked and answered. 15:23:50  
 24

Page 219

1 BY THE WITNESS: 15:23:51  
 2 A. There is a certain amount of 15:23:52  
 3 speculation, because I'll tell you the process that 15:23:53  
 4 I went through in seeing them. When I saw some of 15:23:55  
 5 the negative effects that gray market activity can 15:24:00  
 6 have on a company, one of them, which I wasn't sure 15:24:03  
 7 I would find, was low sales force morale. However, 15:24:07  
 8 in then reviewing the documents that I received, I 15:24:11  
 9 saw that, in fact, that was another problem that 15:24:14  
 10 Adams Golf was facing at the time. I thought that 15:24:20  
 11 was interesting. 15:24:26  
 12 Q. Okay. 15:24:26  
 13 A. And worth noting, since that is often 15:24:28  
 14 caused by the gray market. 15:24:31  
 15 Q. Right. Okay. But it's speculation on 15:24:33  
 16 your part whether there is any cause and effect 15:24:35  
 17 relationship? 15:24:38  
 18 A. Yes. 15:24:38  
 19 Q. 23A, last sentence. "The displeasure 15:24:38  
 20 Adams' authorized retailers felt with gray market 15:25:13  
 21 sales is well documented and described in part in 15:25:18  
 22 Paragraph 15A above." Which authorized retailers 15:25:22  
 23 were displeased with Adams, Professor? 15:25:26  
 24 A. I wouldn't be able to tell you the 15:25:28

Page 220

1 world, the universe of authorized retailers that 15:25:35  
 2 were displeased with Adams. The entire universe. 15:25:40  
 3 Q. Tell me some. 15:25:44  
 4 A. Okay. I can tell you that all the 15:25:45  
 5 retailers that sent complaints to Adams, in addition 15:25:46  
 6 to those that were represented by WDC Mackenzie when 15:25:49  
 7 they corresponded with Adams, and related to Adams 15:25:55  
 8 that authorized retailers in Canada were quite 15:25:58  
 9 displeased. 15:26:02  
 10 Q. Okay. So we have Mackenzie as the 15:26:02  
 11 Canadian distributor, we have got six or seven 15:26:05  
 12 retailers that complain. And what else do we have? 15:26:09  
 13 MR. COLLINS: Asked and answered. 15:26:12  
 14 By THE WITNESS: 15:26:12  
 15 A. We talked about that earlier in the 15:26:13  
 16 day. As far as written documentation, we have got 15:26:15  
 17 the communications between authorized retailers and 15:26:19  
 18 distributors and the company. And that's what we've 15:26:23  
 19 got. 15:26:25  
 20 BY MR. BESSETTE: 15:26:25  
 21 Q. Okay. 15:26:25  
 22 A. If I can just add to that response. 15:27:24  
 23 Just talking back to that earlier conversation, I 15:27:27  
 24 just want to make sure that it is clear that I am 15:27:28

Page 221

1 referring to also having knowledge of the practice 15:27:32  
 2 of regional account coordinators going into the 15:27:35  
 3 field, having strong relationships with the 15:27:38  
 4 retailers. Especially after the gray market problem 15:27:41  
 5 arose, they were making trips into the fields to 15:27:43  
 6 work with authorized retailers. And so like I said, 15:27:46  
 7 and we talked about the speculative nature of this 15:27:50  
 8 as well, I could imagine that an awful lot of 15:27:53  
 9 unofficial complaints were made sort of in those 15:27:56  
 10 engagements. 15:28:00  
 11 Q. Sure. Do you have any evidence of 15:28:01  
 12 any? 15:28:02  
 13 A. No. 15:28:02  
 14 Q. Okay. At Paragraph 19 and I think 21 15:28:03  
 15 of your report, and I don't know that you need to 15:28:09  
 16 refer to them, but you say, again, one of the other 15:28:14  
 17 things that make Adams Golf particularly vulnerable 15:28:16  
 18 to the gray market -- well, no. Strike that. 15:28:21  
 19 You actually say, citing Myers, 15:28:27  
 20 you say, problems can arise in the form of 15:28:31  
 21 ineffective pricing policies, which you talked 15:28:33  
 22 about, deteriorated distributor relationships, which 15:28:36  
 23 you talked about, low sales force morale, again, 15:28:40  
 24 which you've talked about, and poor customer 15:28:41

Page 258	Page 260
<p>1 he does say that there were no specific double 16:27:41</p> <p>2 shipment issues with Jay, there were allegations of 16:27:44</p> <p>3 it. But even if there were, we have got Jay 16:27:47</p> <p>4 Greaney's personnel file where there are allegations 16:27:53</p> <p>5 of several shipments. But my larger question is, at 16:27:57</p> <p>6 most what we see from the evidence is allegations or 16:28:00</p> <p>7 each if some occurred, isolated examples of double 16:28:03</p> <p>8 shipping or extra shipments, whatever you want to 16:28:08</p> <p>9 call it. Where is the material amounts of double 16:28:10</p> <p>10 shipping, where is the evidence of that, for you to 16:28:13</p> <p>11 draw the conclusion that there must have been enough 16:28:16</p> <p>12 out there in the hands of retailers from double 16:28:19</p> <p>13 shipping and consignment sales that allowed them to 16:28:23</p> <p>14 sell to Costco and perpetuate the gray market? 16:28:27</p> <p>15 MR. COLLINS: Are you asking about 16:28:29</p> <p>16 some paragraph -- have you read this paragraph 16:28:29</p> <p>17 carefully? What particular portion of the paragraph 16:28:31</p> <p>18 are you asking her the basis for? I mean, the basis 16:28:33</p> <p>19 for the paragraph is cited in the paragraph. You 16:28:38</p> <p>20 can ask her, as I mentioned, whether there is any 16:28:41</p> <p>21 other basis. If you have got something in 16:28:43</p> <p>22 particular -- 16:28:46</p> <p>23 MR. BESSETTE: Can I have an answer to 16:28:46</p> <p>24 that question, please? And this will be quicker. 16:28:48</p>	<p>1 not have given rise to the entirety of Adams Golf's 16:29:42</p> <p>2 gray market problem if there were only five or ten 16:29:42</p> <p>3 clubs sold into the gray market, no. 16:29:48</p> <p>4 Q. Okay. So let me just cut through it. 16:29:49</p> <p>5 Your statement, I guess three from the bottom. 16:29:52</p> <p>6 "Double shipments and consignments put into the 16:29:56</p> <p>7 hands of retailers a certain quantity of clubs that 16:29:59</p> <p>8 they might not have been able to sell for their own 16:30:04</p> <p>9 customers of standard retail prices." Speculation 16:30:06</p> <p>10 because you say "might not." So you don't have any 16:30:07</p> <p>11 direct knowledge, is that right? 16:30:11</p> <p>12 A. It is not speculation to say that 16:30:12</p> <p>13 double shipments and consignment would put into the 16:30:15</p> <p>14 hands of retailers a certain quantity of clubs. 16:30:19</p> <p>15 That's not speculation. 16:30:19</p> <p>16 Q. But that's based on the evidence you 16:30:21</p> <p>17 cite above, right? 16:30:21</p> <p>18 MR. COLLINS: Excuse me. Let her 16:30:21</p> <p>19 finish. 16:30:21</p> <p>20 BY MR. BESSETTE: 16:30:21</p> <p>21 Q. Just to be clear? 16:30:24</p> <p>22 MR. COLLINS: Let her finish. 16:30:25</p> <p>23 Go ahead. 16:30:25</p> <p>24 16:30:25</p>
Page 259	Page 261
<p>1 MR. COLLINS: Unanswerable. 16:28:51</p> <p>2 BY THE WITNESS: 16:28:52</p> <p>3 A. What I state in the paragraph is that 16:28:53</p> <p>4 there were at least some cases of -- 16:28:53</p> <p>5 MR. COLLINS: I'm sorry. Vague and 16:28:55</p> <p>6 ambiguous, repetitive, unintelligible, asked and 16:28:56</p> <p>7 answered. 16:28:56</p> <p>8 Go ahead. 16:29:01</p> <p>9 BY THE WITNESS: 16:29:02</p> <p>10 A. What I state in this paragraph is that 16:29:03</p> <p>11 there were -- that in some cases, Adams' retailers 16:29:05</p> <p>12 were receiving twice the number of clubs they had 16:29:07</p> <p>13 ordered. And what you asked me about was whether 16:29:10</p> <p>14 there was some material amount. You could imagine 16:29:13</p> <p>15 one case of double shipment that could have given 16:29:16</p> <p>16 rise to Adams Golf's entire gray market problem, if 16:29:20</p> <p>17 it was big enough. 16:29:20</p> <p>18 BY MR. BESSETTE: 16:29:28</p> <p>19 Q. Right. But that's speculation, right? 16:29:28</p> <p>20 A. That is, yeah. 16:29:29</p> <p>21 Q. And we could have one or two examples 16:29:30</p> <p>22 that involves five clubs and ten clubs, and would 16:29:33</p> <p>23 that have given rise to the gray market problem? 16:29:37</p> <p>24 A. The double shipment itself alone would 16:29:39</p>	<p>1 BY THE WITNESS: 16:30:25</p> <p>2 A. That they might not have been able to 16:30:30</p> <p>3 sell to their own customers? It would be 16:30:32</p> <p>4 speculation whether they might have been able to 16:30:34</p> <p>5 sell to their own customers if they held on to them 16:30:36</p> <p>6 long enough. I don't know whether they -- they 16:30:38</p> <p>7 might have or might not have been able to sell them 16:30:40</p> <p>8 on to their own customers if they held on to those 16:30:42</p> <p>9 clubs long enough. 16:30:45</p> <p>10 BY MR. BESSETTE: 16:30:46</p> <p>11 Q. You don't know as you sit here what 16:30:46</p> <p>12 number, if any, of clubs got in the hands of 16:30:46</p> <p>13 retailers through double shipping or consignment 16:30:46</p> <p>14 sales, do you, Professor? 16:30:52</p> <p>15 A. That's correct. 16:30:52</p> <p>16 Q. And you don't know what number of 16:30:53</p> <p>17 clubs, if any, that retailers, assuming they got 16:30:56</p> <p>18 them through double shipments or consignment sales, 16:31:01</p> <p>19 sold them to Costco? 16:31:05</p> <p>20 A. That's correct. 16:31:07</p> <p>21 Q. And your statement here that "This 16:31:07</p> <p>22 provided a pool of clubs potentially available for 16:31:10</p> <p>23 the gray market," again, we don't know how big this 16:31:12</p> <p>24 pool is, you have no direct evidence whatsoever that 16:31:16</p>



Page 266

1 itself. 16:36:09  
 2 Go ahead. 16:36:09  
 3 BY THE WITNESS: 16:36:10  
 4 A. I believe there was a document that 16:36:10  
 5 talks about the first shipment having sold through 16:36:12  
 6 or anticipating the first shipment would sell 16:36:14  
 7 through. 16:36:17  
 8 BY MR. BESSETTE: 16:36:17  
 9 Q. So what evidence are you relying on to 16:36:17  
 10 say that the trend -- that Adams Golf should have 16:36:21  
 11 been aware that sales through Costco were likely to 16:36:24  
 12 continue or intensify after April 1998? 16:36:28  
 13 MR. COLLINS: Asked and answered. 16:36:31  
 14 BY THE WITNESS: 16:36:32  
 15 A. The frequency with which complaints 16:36:33  
 16 were being made was increasing. After that first 16:36:35  
 17 shipment was made, the company was also aware that 16:36:38  
 18 there were additional shipments made to Costco. 16:36:41  
 19 BY MR. BESSETTE: 16:36:44  
 20 Q. And is there any evidence that Adams 16:36:44  
 21 Golf knew what numbers, how much Costco had 16:36:50  
 22 purchased? 16:36:54  
 23 A. The company was trying to determine 16:36:54  
 24 those numbers and was unable to. 16:36:56

Page 267

1 Q. Paragraph 21D, and actually there are 16:36:59  
 2 several places in this report and your rebuttal, 16:37:14  
 3 where you reference the Golf Pro magazine? 16:37:25  
 4 A. Yes. 16:37:29  
 5 Q. Which has a publish date of August 1, 16:37:29  
 6 1998. And you say continuously in various places in 16:37:32  
 7 your report, which was apparently available in the 16:37:37  
 8 middle of July. So just tell me what you base that 16:37:39  
 9 on? 16:37:42  
 10 A. I base that on my lay knowledge of how 16:37:42  
 11 it is that magazines are published. So magazines, 16:37:45  
 12 if you go to a stand in July, in the middle of July, 16:37:50  
 13 you will see a number of magazines that are dated 16:37:54  
 14 August 1st or August or just August plainly. 16:37:56  
 15 Q. So no proof? 16:38:00  
 16 A. It is a common practice -- my 16:38:01  
 17 perception is that it is a common practice in the 16:38:03  
 18 magazine publishing industry. 16:38:07  
 19 Q. Any proof? 16:38:09  
 20 A. No. 16:38:10  
 21 Q. Just an assumption? 16:38:10  
 22 A. Well, no. I mean, in addition to 16:38:12  
 23 that, there is also, in reading the magazine, there 16:38:13  
 24 is some -- when you read that magazine, you see that 16:38:21

Page 268

1 the magazine is talking about forward -- things that 16:38:25  
 2 are happening in the future that happened in July. 16:38:28  
 3 So things that are happening in the future that 16:38:32  
 4 happened at the end of July. So if it was published 16:38:35  
 5 after August 1st, you would assume that would be in 16:38:38  
 6 the past rather than the future, right? The end of 16:38:41  
 7 July was in the past relative to August 1st. 16:38:43  
 8 Q. I don't understand that. 16:38:46  
 9 A. Okay. There are references, and I 16:38:48  
 10 don't remember the exact references I would have to 16:38:50  
 11 read the magazine again. There are references -- my 16:38:52  
 12 recollection is that there are references to things 16:38:55  
 13 that are happening at the tail end of July as if 16:38:59  
 14 those things were happening in the future. 16:39:03  
 15 Presumably the end of July, well, not presumably, 16:39:08  
 16 the end of July is before the beginning of August. 16:39:13  
 17 So if the magazine wasn't published until the 16:39:15  
 18 beginning of August, those things that happened at 16:39:18  
 19 the end of July would have, in fact, been in the 16:39:22  
 20 past, not the future. 16:39:23  
 21 Q. Well, what if the author was 16:39:23  
 22 writing -- it takes a while to write an article, 16:39:25  
 23 does it not? 16:39:27  
 24 A. Yes. 16:39:28

Page 269

1 Q. I am just trying to understand why 16:39:28  
 2 that leads you to the conclusion that it was 16:39:31  
 3 published sometime in the middle of July? 16:39:36  
 4 A. The writer would know when its article 16:39:38  
 5 was going to be published and would write taking 16:39:42  
 6 that into consideration. 16:39:46  
 7 Q. I see. Any other reasons why? 16:39:47  
 8 A. No. 16:39:49  
 9 Q. 21E, first sentence. "Consumer and 16:39:49  
 10 investor knowledge of gray marketing likely 16:40:05  
 11 increased in tandem with the increase of Adams Golf 16:40:08  
 12 clubs available and/or sold through gray market 16:40:12  
 13 channels." Did you do any analysis to lead you to 16:40:16  
 14 that conclusion? Well, actually, is that a 16:40:23  
 15 conclusion or speculation? 16:40:26  
 16 A. The word "likely" I think speaks for 16:40:28  
 17 itself. 16:40:30  
 18 Q. Just for the record, what is it? 16:40:31  
 19 A. It is speculative. 16:40:39  
 20 MR. COLLINS: Is there a question 16:40:41  
 21 pending or is that it? 16:40:43  
 22 MR. BESSETTE: No. That's -- I think 16:40:44  
 23 that answers that one. 16:40:46  
 24



Page 270	Page 272
<p>1 BY MR. BESSETTE: 16:40:47</p> <p>2 Q. 28B. 16:40:49</p> <p>3 A. Can I actually just come back to 21E 16:40:59</p> <p>4 for a second? 16:41:02</p> <p>5 Q. Sure. 16:41:03</p> <p>6 A. I just want to take a second to read 16:41:03</p> <p>7 that paragraph to make sure I gave you a full 16:41:07</p> <p>8 answer. There is a little bit more that went into 16:41:09</p> <p>9 that statement. I can tell you what that was. 16:41:45</p> <p>10 Q. Sure. 16:41:47</p> <p>11 A. There was some documents, again, I am 16:41:48</p> <p>12 not going to remember exactly which exhibits they 16:41:53</p> <p>13 were, that talked about the nature of the golf 16:41:56</p> <p>14 industry and the rapidity with which information 16:41:59</p> <p>15 spreads within the golf industry. And that would 16:42:04</p> <p>16 inform my statement that consumer investor knowledge 16:42:06</p> <p>17 would increase, together with the availability of 16:42:10</p> <p>18 Adams' clubs in Costcos. Right, so -- 16:42:14</p> <p>19 Q. But you have no proof of that 16:42:18</p> <p>20 statement to back it up? 16:42:20</p> <p>21 A. Correct. 16:42:21</p> <p>22 Q. You are making an assumption based on 16:42:22</p> <p>23 something else you read? 16:42:24</p> <p>24 A. Correct. 16:42:25</p>	<p>1 plus sales were nonetheless included in the 16:43:52</p> <p>2 company's total sales volume figures as presented to 16:43:56</p> <p>3 potential investors." Good point. 16:43:56</p> <p>4 Let me ask you, as presented to 16:43:58</p> <p>5 potential investors where and when? 16:44:02</p> <p>6 A. In the prospectus. 16:44:04</p> <p>7 Q. Are there any sales numbers for the 16:44:05</p> <p>8 second quarter of 1998 in the prospectus? 16:44:09</p> <p>9 A. Let me look at the prospectus again. 16:44:12</p> <p>10 MR. COLLINS: Can I cut this short? 16:44:14</p> <p>11 MR. BESSETTE: Yeah. 16:44:14</p> <p>12 MR. COLLINS: We can stipulate that 16:44:15</p> <p>13 the second quarter numbers are not in the 16:44:16</p> <p>14 prospectus. 16:44:18</p> <p>15 MR. BESSETTE: Okay. 16:44:18</p> <p>16 THE WITNESS: Great. 16:44:18</p> <p>17 MR. COLLINS: And Professor Ochoa is 16:44:19</p> <p>18 not offering -- 16:44:21</p> <p>19 THE WITNESS: You're right. 16:44:21</p> <p>20 MR. COLLINS: -- is not offering an 16:44:22</p> <p>21 opinion on the second quarter financial statements. 16:44:25</p> <p>22 MR. BESSETTE: That's fine. That 16:44:30</p> <p>23 statement is then wrong for the record. That 16:44:32</p> <p>24 statement is incorrect. 16:44:40</p>
Page 271	Page 273
<p>1 Q. 28B, last sentence. You are talking 16:42:26</p> <p>2 about the 8,400 clubs that Costco had purchased pre 16:42:34</p> <p>3 IPO. 16:42:59</p> <p>4 A. I'm sorry, 28B? I was in the wrong 16:42:59</p> <p>5 place. 16:42:59</p> <p>6 Q. 28B, page 18. 16:42:59</p> <p>7 A. Yeah. 16:42:59</p> <p>8 Q. You can read that paragraph. You talk 16:43:00</p> <p>9 about the clubs. And you say in the last sentence, 16:43:02</p> <p>10 "These 8,400 plus sales were nonetheless included in 16:43:08</p> <p>11 the company's total sales volume figures as 16:43:11</p> <p>12 presented to potential investors." Now, how do you 16:43:15</p> <p>13 know that? 16:43:15</p> <p>14 A. Because the company sold those clubs, 16:43:15</p> <p>15 I would assume that they had an accurate accounting 16:43:30</p> <p>16 of the clubs they sold. 16:43:32</p> <p>17 Q. Is it your understanding that the 16:43:33</p> <p>18 company presented its Q2 numbers to potential 16:43:36</p> <p>19 investors? 16:43:41</p> <p>20 MR. COLLINS: Could you make that more 16:43:41</p> <p>21 crisp, please? You mean in the IPO? In the IPO 16:43:45</p> <p>22 prospectus? 16:43:48</p> <p>23 MR. BESSETTE: Anywhere. 16:43:49</p> <p>24 Q. I mean, you say here, "These 8,400 16:43:50</p>	<p>1 MR. COLLINS: I think we have a 16:44:47</p> <p>2 disconnect. 16:44:48</p> <p>3 BY MR. BESSETTE: 16:44:49</p> <p>4 Q. If that statement is not incorrect, 16:44:49</p> <p>5 tell me where and when second quarter sales numbers 16:44:51</p> <p>6 were presented to potential investors? 16:44:56</p> <p>7 MR. COLLINS: If you know, please 16:45:01</p> <p>8 answer. 16:45:03</p> <p>9 BY THE WITNESS: 16:45:03</p> <p>10 A. I don't know. 16:45:05</p> <p>11 BY MR. BESSETTE: 16:45:07</p> <p>12 Q. So you put this statement in here 16:45:08</p> <p>13 without any evidence or knowledge? 16:45:10</p> <p>14 MR. COLLINS: About -- 16:45:13</p> <p>15 BY THE WITNESS: 16:45:13</p> <p>16 A. About what? 16:45:14</p> <p>17 BY MR. BESSETTE: 16:45:14</p> <p>18 Q. About what you say here. 16:45:16</p> <p>19 A. I guess if you can give me a full 16:45:17</p> <p>20 question, that would be great. 16:45:22</p> <p>21 Q. Okay. How about tell me what your 16:45:24</p> <p>22 basis is for saying that 8,400 clubs sold to Costco 16:45:24</p> <p>23 in the second quarter were reflected in the numbers 16:45:28</p> <p>24 of the company as presented to potential investors? 16:45:31</p>

Page 306	Page 308
<p>1 Q. Well, when you did your report. 18:00:15</p> <p>2 A. From reading the documents, I was 18:00:17</p> <p>3 aware of what the documents say regarding life 18:00:19</p> <p>4 cycles. 18:00:24</p> <p>5 Q. No independent knowledge before you 18:00:25</p> <p>6 started your work in this case about life cycles of 18:00:32</p> <p>7 various golf clubs or golf products? 18:00:35</p> <p>8 A. No. 18:00:38</p> <p>9 Q. Do you know what the lifespan was of 18:00:38</p> <p>10 the Tight Lies club? 18:00:58</p> <p>11 MR. COLLINS: Vague and ambiguous. 18:01:00</p> <p>12 BY THE WITNESS: 18:01:00</p> <p>13 A. I don't know. 18:01:05</p> <p>14 BY MR. BESSETTE: 18:01:06</p> <p>15 Q. You are aware that the company 18:01:06</p> <p>16 produced a newer one, a Tight Lies 2 I think or 18:01:08</p> <p>17 whatever they called it, beyond the original, they 18:01:13</p> <p>18 made a series of clubs? 18:01:16</p> <p>19 A. Yes, I am aware that they were -- I 18:01:16</p> <p>20 believe there was more than just the two. I believe 18:01:19</p> <p>21 there were additional. 18:01:21</p> <p>22 Q. Right. If Adams Golf had continued to 18:01:24</p> <p>23 produce only the original Tight Lies, do you have an 18:01:28</p> <p>24 opinion here what would have happened to sales of 18:01:32</p>	<p>1 due diligence investigation by the underwriters in 18:02:26</p> <p>2 connection with the IPO of Adams Golf was reasonable 18:02:30</p> <p>3 and adequate? 18:02:34</p> <p>4 A. Yes. 18:02:35</p> <p>5 Q. And do you have any intention of 18:02:35</p> <p>6 offering any opinion on that question? 18:02:37</p> <p>7 A. No. 18:02:39</p> <p>8 Q. Coming back to the drafting process 18:02:39</p> <p>9 that you used in preparing both your initial report 18:02:46</p> <p>10 and your rebuttal report. From the time that you 18:02:49</p> <p>11 first began working on this matter until we started 18:02:55</p> <p>12 the deposition this morning, do you have an estimate 18:02:58</p> <p>13 of how many hours you've spent on this matter? 18:03:01</p> <p>14 A. Yeah. From what was the beginning 18:03:04</p> <p>15 time, I'm sorry? 18:03:09</p> <p>16 Q. Whenever you started. 18:03:10</p> <p>17 A. Whenever I started the matter until 18:03:13</p> <p>18 now? Approximately, I believe it is something like 18:03:14</p> <p>19 100 hours. 18:03:17</p> <p>20 Q. And has anybody else connected with 18:03:17</p> <p>21 the law school provided any research or other 18:03:19</p> <p>22 assistance to you in connection with your work? 18:03:22</p> <p>23 A. I have had -- I have been working 18:03:24</p> <p>24 mostly at home. I have had difficulty downloading 18:03:27</p>
Page 307	Page 309
<p>1 the original Tight Lies over time? 18:01:35</p> <p>2 MR. COLLINS: Outside the scope. 18:01:37</p> <p>3 BY THE WITNESS: 18:01:38</p> <p>4 A. No. 18:01:38</p> <p>5 BY MR. BESSETTE: 18:01:39</p> <p>6 Q. Do you have any opinion on what would 18:01:41</p> <p>7 have been the impact of gray marketing on the 18:01:43</p> <p>8 continued sales of only the original Tight Lies 18:01:48</p> <p>9 clubs if that's all the clubs Adams Golf had? 18:01:51</p> <p>10 A. I would be really in the realm of 18:01:56</p> <p>11 speculation to answer that question. 18:01:59</p> <p>12 MR. BESSETTE: We are good. I am done 18:02:00</p> <p>13 for now. Thanks. 18:02:03</p> <p>14 EXAMINATION 18:02:03</p> <p>15 BY MR. GLUCKOW: 18:02:03</p> <p>16 Q. Professor Ochoa, Paul Gluckow, I'm 18:02:03</p> <p>17 with Simpson Thacher. My firm represents the 18:02:09</p> <p>18 underwriter defendants in this matter. 18:02:11</p> <p>19 I take it from your report you 18:02:13</p> <p>20 have had an opportunity to review Mr. Miller's 18:02:17</p> <p>21 report as well? 18:02:20</p> <p>22 A. Correct. 18:02:21</p> <p>23 Q. And you understand that Mr. Miller is 18:02:21</p> <p>24 prepared to offer testimony concerning whether the 18:02:24</p>	<p>1 PDF files, my secretary has assisted me in 18:03:30</p> <p>2 delivering PDF files. 18:03:35</p> <p>3 Q. And other than secretarial assistance, 18:03:36</p> <p>4 have you had anybody doing any actual research to 18:03:39</p> <p>5 help you? 18:03:41</p> <p>6 A. No, no. 18:03:41</p> <p>7 Q. Who wrote your initial -- 18:03:42</p> <p>8 A. Actually, let me back up. 18:03:44</p> <p>9 Q. Yeah. 18:03:44</p> <p>10 A. I have asked a librarian to pull some 18:03:46</p> <p>11 documents for me. But not doing actual research, 18:03:49</p> <p>12 just pulling documents. 18:03:52</p> <p>13 Q. To pull documents that you identified 18:03:52</p> <p>14 yourself? 18:03:57</p> <p>15 A. That I had previously identified, yes. 18:03:57</p> <p>16 Q. Who wrote your initial report? 18:03:58</p> <p>17 A. I did. 18:03:59</p> <p>18 Q. Is every word in that initial report 18:03:59</p> <p>19 yours? 18:04:02</p> <p>20 A. Yes. 18:04:02</p> <p>21 Q. And did anyone other than yourself 18:04:02</p> <p>22 have any input on the initial report? 18:04:05</p> <p>23 A. I had discussions with Mr. Collins 18:04:10</p> <p>24 about the questions that I was being asked. I also 18:04:13</p>